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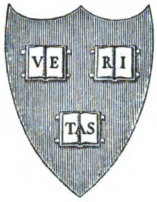

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MANUAL

OF

LAND TENURES.

BEING A BRIEF SUMMARY OF THE LAW RELATING TO THE RAIATWARI TENURE, WATANS AND SARANJAMS,

WITH

FULL TEXT OF LAND REVENUE CODE AND THE WATAN ACT.

(As prescribed for the Bombay LL.-B. Examination.)

BY

TRIKAMLAL Ramnhodlal DESAI, B. A., LL.-B.

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Editor "The Lawyer," Author of Handy Commentaries on Law of Evidence, Law of Limitation, Trusts Act, Specific Relief Act, Indian Contract Act, Handbook of Hindu Law; and Compiler of Student's Series of Law Examination Manuals.

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APPLY TO

T. R. DESAI, B.A., LL.B.,

GIRGAON, BOMBAY.

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Compiler's Note.

In this little manual attempt is made to acquaint the student reading for the Bombay LL. B. Examination with fundamental principles of the different systems of Land Tenure in the Bombay Presidency. The manual is not intended to be, nor does it claim to be, a text book, nor any more than an examination manual giving the necessary information concisely.

Four appendices are added, dealing respectively with the Case Law on Watans and Land Revenue Code, the questions set at examinations and a glossary of technical terms; these it is hoped will be very useful to those for whom it is meant.

The full text of the Land Revenue Code and Hereditary Offices Act (Watan) is given with amendments up-to-date as a supplement.

Due care has been taken to make the index concise but clear and as facilitating reference.

HIGH COURT, BOMBAY,
10th May, 1907.

T. R. DESAI.

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INTRODUCTION.

Features of the Bombay Raiatwari System.

(i) A Survey of the land, (ii) division of it into survey numbers, blocks more or less representing the individual holdings, (iii) determination of Government rates to be assessed on each field, (iv) it allows the raiat (cultivator) the privilege of relinquishing any field he does not wish to hold by giving his *rajinamah* or notice of his desire to relinquish in proper time, and he can apply for any unoccupied lot that is available. The raiatwari system of tenure is treated in the Land Revenue Code Bombay Act V of 1879.

One of the great features of the raiatwari methods is the facility it affords for the contraction and expansion of operations by the cultivator according to his means. He is bound by no lease. The amount of his assessment is fixed for 30 years, but his title to the land goes on from year to year. It is practically indefeasible so long as he pays the assessment.

Sind.—The system in Sind though Raiatwari is wholly local and unconnected with the tenures in Western India.

History of the Bombay System.

The Bombay System began in 1855, but may really be dated from the time of its development into uniformity in 1847. It came after the Bengal Permanent Settlement and after the N. W. P. Village System of 1822 and the Madras Raiatwari settlement.

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Survey settlement is set in operation by direction of the Government, S. 95 L. R. Code. No notification in the Gazette is necessary to be given ; the Governor in Council appoints Survey officers. Ss. 98-102. It is directed with a view to assessment of land revenue for a term of years. Assessment cannot be enhanced till the original term of settlement has expired.

Maratha System. (1) State organization and (ii) the village or social organization. Early Hindus took revenue in kind and did not measure land. Shah Jahan in 1637 introduced Akbarian system i. e. land was measured with standard measure and was assessed at ¼ of the calculated average produce commuted into and fixed for ten years. The assessment was called "Tankha" *i. e* cash. Marathas then took the revenue in money on the basis of older measurements. In Bombay the first survey settlement on the Raiatwari method was made in 1824 by Mr. Pringle, I. C. S., but it failed ; the next one began in 1835 and was successful.

What is a survey number.—It is the unit of survey ; it is the number by which a block or a collection of fields, are put down in the register and the smaller subdivisions are duly demarcated, surveyed and recorded. It is meant to identify the permanent divisions of land in the village (s. 98). No survey number can be made less than a minimum size fixed by the Survey Settlement Commissioner on the sanction of the Government. The principle is this : Every independent holder paying revenue to Government is to be separately measured and assessed on its own merits. It is thus demarcated ; but if it is too small to be a separate survey number it is indicated in the register as a *Pot* (subordinate) number. It is legally a recognized share of a survey number. A survey number as defined in Ss. 3-6 is a portion of land of which the area and

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other particulars are separately entered under an indicative number in the survey records and includes a recognized share of a survey number.

In General.—A survey number does not exceed from 20 to 30 acres of dry crop land. One acre of rice land is equivalent to 3 acres of dry crop and one acre of garden land to 5. Every occupancy not less than one acre and having a separate recognition is so treated. Inam and government land even in one holding are made into separate numbers.

Classification of soil for the purpose of assessment.—All land whether applied to agricultural or other purposes and wherever situate is liable to payment of land revenue to government unless expressly exempted. (S. 45). They are classed as

(1) *Jarayat* (Arabic *jera* = cultivation) unirrigated.

(2) Rice land. It may be entirely irrigated by rain, flooding or artificial means.

(3) *Bagayat* is garden land; it may be noted that if watered from wells, the water being raised by buckets and *Patashal* if from tanks or dams.

Jarayat soils may be of the 3 orders: (1) fine black, (2) coarser, red, (3) barad or high soil. Land with less than ¼ inch deep is not cultivable at all. Each order has 7 classes according to depth 1¾, 1½, 1¼, 1, ¾, ½, ¼. The best class is valued as one whole *i. e.* 16 annas in the rupee, another at 14 annas and so on. The soil of a particular class may be lowered by accidents *e.g.* sloping surface, admixture of sand, impermeability to water, excessive moisture. After the classer has done his work *i. e.* classified the dry soil, the Superintendent of Survey as Assessor adopts actual assessment rates to be basis of calculation; the existing or former rate is considered with reference to

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altered circumstances, the rise or fall of prices, improvement in population, means of transfer.

Settlement of alienated lands. This *i. e.* grants, revenue free or partly revenue free (Judi or Quit rent) are not as an entire class assessed. The Code gives power to survey the villages as regards their boundaries and settle disputes regarding those boundaries. Watan lands are now assessed to a sum sufficient to provide remuneration for the actual office holder.

Revision settlement. The term of settlement is 30 years except in Sindh where it is 10 only because of local circumstances. Revision is held when this period expires (s. 102). The principle is that if since a first settlement a land holder has improved his land himself or at his own cost, such improvement is not to be taxed beyond increased assessment; but then an increase can be taken with reference to any natural advantage when the improvement effected from private capital and resources consisted only in having created the means of utilizing such advantage. (See Bom. Act IV of 1886.)

In revision the revenue of a Talooka is not to be increased above 33 per cent of the original, nor of a single village to more than 66 per cent without special sanction, nor on the individual holding it is to exceed 100 per cent.

Record of settlement (53 & 108).

(1) Village map.

(2) Settlement register giving the area and assessment of each survey number with the name of the registered occupant of the number.

(3) Bolkhat, Record of each holding.

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Register of alienated lands.—It is to be kept by the Collector in the prescribed form; only those lands alienation of which is recognized or established are to be included therein. A certified extract from the register can be given on payment of fee in case of loss or destruction of the sanad. The extract is valid proof of title as the sanad. No fresh Sanads are issued in case of alterations. The existing ones are altered and indorsed by the Collector. The register is a district register; villages are to be entered in alphabetical order (S. 53).

Land Tenures. TERRITORIAL DIVISIONS.

(1) *Gujrat.* Several tenures subsist because of its physical and historical features. There is the Raiatwari tenure, the Narwa or Bhagdari villages, Joint villages system and Talukdari estates of chieftains of Rajput families.

(2) *Deccan.* Raiatwari and Khot Revenue farming; these are classified as under :—(according to kind).

(1) Village system as it now exists *i. e.* the non-land lord or Raiatwari system.

(2) The survival of the joint or land lord village (Narwa or Bhagdari) in Gujrat.

(3) The cases where double or overlord tenures are established over the villages *e. g.* Talukdars of Ahmedabad or Khots of Konkan.

(4) Alienated lands *i. e.* held under grant of complete or partial freedom from revenue payment including service and other watans.

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Classification according to locality.

DECCAN AND PRESIDENCY GENERALLY.	The survey tenure villages now consisting of aggregate of uncommuted raiats with equal rights under the Code—Joint village.
GUJRAT.	Narwa or Bhagdari. Talukdari or overlord tenure. Wanta Lands. Mevasi. Maliki
N. KONKAN.	Khoti tenure Shelatti Srafat.
S. KONKAN.	Khoti tenure Tenures as in S. Kanara

Note.—

Mirasidars. Hereditory cultivators. They were once members of co-sharing landlord's committees. Mirasi right could be purchased on consenting to pay the Government revenue demand.

Suti. (from *Suta*—Son *i. e.* inherited land) or from Swasti—cheap implying the favourable terms on which the land was held. It resembles Mevasi and prevails in N. Konkan.

Nurwari i. e. held on scheme for distributing the burden of the revenue.

These are only in Kaira held almost entirely by Kunbis.

Bhagdari held on Bhags *i. e* shares.

These are in Broach. There are pattadari villages held on ancestral shares.

Narwah tenure.—The difference does not lie in the distinction of the constitution of the village bodies. It only consists in certain methods of the assessment of the

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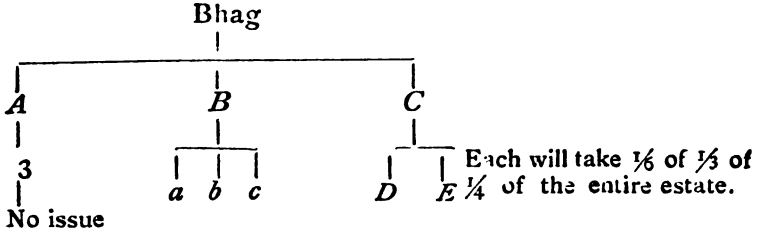
revenue imposed. Bhagdari villages are villages of shareholders held on ancestral shares like Patidari in N.-W.-P. The total assessment is distributed for payment not according to the number of *Bighas* or the rate fixed according to fractional shares in the village as shown by the Phalin (list of shares). The whole estate is divided into primary division *i.e.*, *water* bhag, or divided at once into Petabhag, each sharer in a Bhag is called Pattidar.



In Narwa village no Bighat assessment is made of each Bhag, but a lump sum is levied on the village and then the co-sharers make out a Narwa, a list of the amount each was to pay. It is proportionately to the means of each holder and the value or capacity of each share.

Joint Village System.—(*features*) Each major share has an elder or head called Head Sharer (Mukh Bhagdar) or the Muttadar (who holds the seal and signs as a representative). These are like Lambardars of N.-W.-P. Each sharer is given the honorary address of a *Patel*. These are recognised by Bombay Act V of 1862.

A 'field to field' assessment is in practice actually made because if the village escheat or be forfeited for arrears of Revenue, Government would not at once be able to manage the village on the Raiatwari system without knowing the proper assessment of each field; so long as the village remains joint, the sharers have their portion of the revenue payment

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assigned according to the customary distribution shown in the Narwa register. The sharers are responsible jointly and the sub-sharers severally for the revenue whether the land is cultivated or not. There is no relinquishing or taking up as under the survey tenure. When all the land of the village is not held in Bhags, the remaining land (common) is treated like other raiatwari land *i.e.* revenue of each field is levied from the actual occupant according to his occupation.

Object of S. 5 of 1862. (Bhagdari and Narvadari Act). It was to prevent confusion being introduced by the sale or mortgage of the sites for habitation (Gabhan) and the homestead land belonging to each sharer or Bhag, and to prevent portions of the land other than recognized shares being sold and so obliterating the ancient divisions and sub-divisions. All such alienations can be held void by the collector; the tendency is to revert to raiatwari which they are allowed to do by giving up surplus waste to Government.

Raiatwari or survey tenure. This is the ordinary tenure of village holders who have no special grant or other peculiarity in the title by which they are connected with the soil. The Land Revenue Code does not enunciate any theory of proprietory right. It only describes what the incidents of the rights are. It does not call the land holder a proprietor.

Incidents of the system. The right of occupancy is itself a property, permanent, heritable and transferable. It is of course conditional on the payment of the revenue assessment (Ss. 67-73.). Failure to pay this involves the land and every thing on it to liability to forfeiture and to all the legal processes for recovery of arrears. (S. 40). But then

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this right of occupancy does not in itself include any right to mines and mineral products. These are reserved to the state. The occupant has a right to erect farm buildings, construct wells or tanks and make improvements for the purposes of agriculture; it can be diverted for non-agricultural purposes only with the permission of the collector. Neglect to obtain this permission entails liability to summary eviction; fine has to be paid before such permission can be had.

Relinquishment. This may be by giving Rajinamah—a notice in writing to the local revenue officer. The notice has to be given before 31st March if the relinquishment is "absolute". Transfer may be made at any time in favour of a specified person. The transferee must give his consent in writing and his name is then substituted in the register.

When a recognized share of a survey number is relinquished the occupants of the share have the preferential right to take it up as in S. 99 (G).

Forfeiture. A co-occupant, tenant or mortgagee can prevent forfeiture of a holding by paying up the revenue (S. 80). Where there are several occupants the collector need not forfeit the whole occupancy merely because the registered occupant fails to pay, he can deal only with the defaulting occupants' interests by transferring to one of the others who pays up.

Taking up new land. S. 60-62. He has to apply in writing; occupation without proper authority is made penal. The right is generally put upto auction, where land is much in demand.

Succession.—S. 71. On the death of a registered occupant his eldest son or a person appearing to be his heir or the principal among the several joint heirs

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is entered as registered occupant. Record may be amended on production of a certificate of heirship.

Occupancy tenure compared with proprietory tenure.—The former is a limited property like an English copy holder.

Restrictions on the right are:—

(i) Failure to pay the revenue causes the right to terminate *ipso facto*. A revenue officer can instead of absolutely ejecting the defaulter use coercive measures to recover the balance.

(ii) The land may be improved, but cannot be destroyed or rendered unfit for agricultural purposes without express permission and a payment for it.

In these respects the right is little less than a proprietory right; a right of occupancy depends on occupation. It is lost directly a holding is relinquished or is abandoned.

Under tenants and inferior holders (in Raiatwari system). Ss. 83, 84. Annual tenancies are terminable by 3 months' notice on either side; they run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on 31st March. Questions of duration of tenancies and of terms of the inferior occupancy depend on the agreement of the parties. In the absence of proof to the contrary or of usage as to duration it is presumed to be coextensive with the tenure of the superior. There is no limit to the superior's powers of auction or enhancement of rent except the terms of the agreement or usage of the locality.

In case of other tenures they depend upon the provisions of the Special Act *e.g.* Talukdari Act, Khoti Act, &c. (s. 85)

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Double tenures.—*Origin.* These follow on the desruption of a ruling chief's estate. The ruler's family sinks to the position of peasant proprietor. The dignity and independence is gone but the estate remains. The new ruler recovers revenue due from the sole landlord who in turn takes from the soil owners who sank into secondary position. In other cases they are the estates held by younger members of ruling Rajput families, to whom territories were assigned for maintainance. This is in Ahmedabad Talukdari estates.

In other parts revenue farming arrangements gave influence to persons who had not necessarily any territorial or hereditory position. The ruler sometimes selected as his revenue farmer or security a man who was once a local chief or a land officer and the result was the double tenure.

Wanta tenure. These are merely fragments of larger estates still held by the descendants of the chiefs who were obnoxious to the former conquerors and were reduced accordingly under early Moslem rule. It is derived from the old service grants of the Hindu Raj. Their estates were taken away and a fraction (fragment ¼) of their possession was left. It is from Hindustani Banta—Vanta—divided. These are to be found to the North of the Tapti river *i. e.* above Surat. It is now used in contra distinction to *Talpat*—fully assessed lands. Majority of these now pay the lump reduced assessment (*Udhad Jama*). The holder can make profit by the difference between the lump sum and what he can make by letting it out to individuals.

Mevasi tenure. It is from Mevase—(troubled) Maratha called the country that was troubled—mevas. It was troubled by Kolis and Rajput free booters who were called Mevasis. The holders of lands sought refuge of local chiefs.

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This tenure exists along the river Mahi and the Parantij Taluka of the Ahmedabad District. The owners pay a lump sum as tribute and derive their profit from the difference between this and what they collect from the inferior occupants. Some times they have no direct concern with the land when it is divided into many shares.

Giras tenure.—It is applied especially to a cash allowance or revenue assignment and not to indicate a landed or proprietory estate. The allowance is called *Toda giras*. None can mortgage this right beyond his own life time. Bombay Act 7 of 1887. This custom arose out of the dispossession of the old Rajput chiefs in Gujrat These persons in turn harassed the inhabitants and Government of their estate by plunder, robberies and so to secure the protection against such raids, a share of the revenue came to be given to the plunderers. (*Giras* = mouthfuls). It is paid only to lineal male descendants, unless the Government extend it to the descendants of another.

Talukdari tenures.—The estates that remained fairly preserved out of the old Rajput Kingdoms in Gujrat —whether originally girasia estate or not, are now called *Talukdari*. This was the term applied under the Mahommedan rule. The estates called Talukdari exist in Viramgam, Sanand, Dholka, Dhandhuka and Gogha Subdivisions of Ahmedabad. Those holding a single village are called Gametis. The holders were declared by the Bombay Act VI of 1862 to be absolute proprietors of their estates subject to the payment of a tribute called *Joma*, which is fixed for a term of years and liable to revision. Thakur's estates can be mortgaged (pasaita), but not permanently alienated.

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As between the tenants and the Talukdars the rent is paid in kind according to the village *dhara* or custom of division ; a part is first set aside for seed and perquisites of village menials and the rest is divided between the landlord and the cultivator. The tenants are from year to year but they are not ejected so long as they conform to the custom. If a tenant leaves the house the wooden frame work of his house becomes the perquisite of the chief. It cannot be sold or removed. Survey settlement is introduced in the villages to prevent confusion of boundaries. The Act of 1862 is followed by the Bom. Act VI of 1888 which makes provision for the revenue administration of the estates and for the partition of the estates where this is admissible. In case of dispute as to partition, decision is to be by a civil suit.

Kasbati tenure. The term "Kasba" refers to a large village and sometimes to a group composed of a parent village and offshoots. When in former days these were farmed for revenue purposes, the farmer acquired the landlord position and the estates so held are now called "*Kasbati.*" The holders are usually Mahomedans, and are found in Dholka Taluka of Ahmedabad District. They are described as descendants of rich holders who by lending money and standing security for the payment of revenue gradually raised themselves to the position of landlords.

Maliki tenure.—This is in the Thasra Taluka of the Kaira District. It was originally a royal grant on favourable terms of land held as a reward for service. These were given for services rendered in taking the fort of Pavagad, to certain Musalman families by the Sultan of Ahmedabad. These holders have now Sanads from the British Government and are assessed at a fixed revenue rate.

Khoti.—This is in Konkan Districts only.

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PART I.

Land Revenue Code.

What is the object (i) *extent of the L. R. Code.*

Define the following terms:—Revenue officer, estate, survey number, building site, holder, holding, superior and inferior holding, tenant, occupant, registered occupant, occupancy, alienated land revenue year.

Object. It consolidates the law relating to land revenue in the Bombay Presidency, the assessment and recovery of land revenue and all other matters connected with the land revenue administration. *Extent.* It extends to the whole of this Presidency; but not to the city of Bombay. By Khoti Act certain sections are held inapplicable to the Khoti villages in Ratnagiri and Kolaba, and by the Gujrat Talukdar's Act of 1888 certain sections are rendered inapplicable to the Talukdar estates in Gujrat.

Explanation of Technical terms.

(*a*) *Revenue officer* is any officer of any rank employed in the business of the land revenue or of survey assessment, accounts, or records connected therewith. He must have been appointed under this Act. So hereditary village officers are not revenue officers; nor are officers employed to ascertain forest rights. But District agricultural Inspectors are.

(*b*) *Estate* is any estate in land or an aggregate of such interest vested in a person capable of holding it.

(*c*) *Survey number.* It is a portion of land of which the particulars as to area, etc., are separately entered

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under an indicative number in the records. It includes a recognized share thereof *i. e.* a sub-division of a survey number separately assessed and registered. In practice there is a third kind of sub-division called *Pot number* which is a still subordinate survey number. The Code does not recognise it, but deals with it as a recognised share of a survey number. These have now no typical character though a soil is just large enough to be cultivated by the occupant with a pair of oxen.

(*d*) *Building site.* A portion of land held for building purposes even though a building is not actually erected thereon. It includes open ground adjacent to any building erected thereupon.

(*e*) *Holder.* He is a person in whom the right to hold land is vested in any capacity. It may be in trust or for public or on his account, etc.; mortgagee with a right to possession is included in the term. The land over which that right extends is a holding. It may be of any size. He is said to be a superior holder when he is entitled to receive from other holders rent or land revenue on account of lands held by them; those so liable to pay rent to such holders are termed inferior holders.

(*f*) *Tenant.* He is a person who holds by a right derived from a superior holder called his landlord.

(*g*) *Occupant.* He is a person holding unalienated land; where there are more than one, the one having the highest right in respect of that land is called the occupant. He who is a sole occupant or is the eldest or principal of several joint occupants whose name is authorisedly entered in Government records as holding unalienated land —agent, servant, etc., is called a "registered" occupant.

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Whereas the "*occupancy*" signifies the sum of the rights vested in an occupant as such whether the land be surveyed or not.

(*h*) *Alienated land* is that whereof the right of the Government to payment of the rent or land revenue is wholly or partially transfered to the ownership of any person.

(*i*) *Revenue year.* It means period from first August to 31st July of the succeeding year.

CHAPTER IV.

(Ss. 37 to 77.)

In whom does the property in public roads vest. How does the Code affect pastures.—To whom do ordinary and roadside trees belong?

Property in public roads and lands (s. 37). S. 37 vests in the Government the property in all public roads and lands, paths, bridges, ditches, lakes, tanks, beds of sea, etc., which are not the property of a private person or a corporation. The collector can dispose of the same subject to the rights of way of the public legally subsisting. In case of beds of sea and creeks it is limited to high-water marks—the highest point reached by ordinary spring tides at any season of the year.

Note (i) S. 37 of the Act does not affect s 50 (2 G) of the *Municipal Act.*

(ii) Public roads vest in the *Municipalities*, but the soil thereof does not belong to them; besides they have no control over provincial high roads or trunk roads.

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(iii) Though the Collector can under s. 37 dispose of interest of the Government in the land he cannot decide as to *private title*. Apparent Government possession is not sufficient to evict.

(iv) *Survey officers.* When survey operations are proceeding and the Commissioner can assign Government lands not in the lawful possession of any one for free pasturage for village cattle, forest reserve or for any other public purpose. (s. 38.)

Lands assigned for any purpose cannot be appropriated to another without the sanction of the Commissioner; in case of Military Camping ground sanction of Government of India is required.

(v) *Pasturage.* Rights of grazing on free pasturage lands extends only to the cattle of that village. A Collector's decision is final. Right of grazing on roadside is generally not sold. (39)

Trees. (Ss. 40 to 44.) Right to all trees specially reserved under s. 40, and to trees, brushwood, Jungle, etc. growing on land set apart for forest reserves under s. 32 of Act I of 1865 or s. 38 of this Act, vests in the Government. They are to be preserved and protected in case of settlements completed before 1879. S. 40 holds that Government right in trees in villages is conceded to the occupant but not in the case of teak, blackwood, and sandalwood trees. The right to these would pass if there are express words to that effect.

Concession to occupy land is deemed to include the concession of the right of the Government and all trees growing on the land which are not expressly reserved.

Note (i) Whatever is planted in the soil becomes subject to the same rights of property as the soil itself.

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If a person plants a tree in Government land, the tree is the property of the Government and the planter has no right thereto. A claim to enjoy the produce cannot be maintained by custom.

(ii) District hereditary officers have no right to trees standing on lands which they hold for service uncommuted and ~~without proprietory~~ rights, unless their title deeds give them an express right to these.

(iii) All trees outside railway fence are Government property.

(iv) Special rules are framed as to cutting off trees in service lands.

Roadside trees. They vest in Government if planted and reared by Government or local funds. In case of their being blown down or dying, the timber belongs to the holder; for tapping Collector's orders are necessary. Persons desiring to have reductions in assessment can give up to government the strip of land covered by the tree; the said strip then belongs to government.

Note (i) A person unauthorizedly felling a tree is liable for the value, which is recovered like arrears of land revenue—and also to a penalty and a criminal prosecution under s. 76, I. Forest Act of 1878. The collector is to decide the value.

(ii) The collector is to regulate the supply of firewood and timber for domestic purposes in villages (s. 44).

Summary. The trees do not necessarily follow the soil or all occupancy. In settlements after the Land Revenue Code of 1879, trees not expressly reserved go with the occupancy and so when an unoccupied number is applied for and granted, in lands under settlements made before 1879, all trees are held to belong to the occupant of the number unless reserved under special orders (Ss. 40-44).

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All trees otherwise belong to government and so do road-side trees ; as for road side trees so long as they live they belong to government; if they fall or die, then to the occupant of the land ; usufruct *i. e.* produce of loppings, if lopping be allowed by the Collector, belongs to him even in case of reserved trees. There is sometimes the privilege of *rah i.e.* of taking wood for domestic purposes and of tapping branches and form ash manure for rice fields.

In alienated lands as a rule the trees belong to the grantee ; but not teak, blackwood or sandal unless they have been specially conceded.

Liability to Land Revenue Assessment.

What is the general principle of liability to revenue assessment? Are all lands chargeable with Land Revenue? How is assessment fixed and by whom?

All lands are liable to land revenue, wherever situated, whether applied to agricultural purposes or not, unless specially exempted. Government have a right to levy revenue on lands under whatever title they may be held, but that is only and so long as the exigencies of the State render it necessary.

(i) *Nature of defence.* A person setting up a right in derogation of the provisions of S. 45 has to prove it strictly ; the fact that small rents were paid for many years or that the claimants were invited to cultivate it when it was reclaimed from the sea, is no bar to the right of the Government to enhance the assessment (*Shapurji* v. *Government of Bom.*, 9 Bom. 483.)

(ii) *Devasthan land.* The resumption of Devasthan land by imposition of full assessment is legal only when the class of beneficiary being wholly extinct the property reverts to Government.

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(iii) *Alluvial and Deluvial Lands.* Alluvial lands abandoned by river beds, or newly formed lands which vest in holders of alienated lands, are not subject to revenue unless the area exceeds half an acre and exceeds one-tenth of the area of the said original holding. S. 46. While it deals with the manner of dealing with alluvial accretions so far as their liability to land revenue is concerned does not enter into the question of the right to such accretions; it leaves it to be determined by the law for the time being in force. At present there is none such in force and cases are decided on principles of English law. Similarly in case of deluvian if it is not less than half an acre in extent nor less than 1-10 of the holding, the holder can get remission.

Holding means a survey number or any division of land on which a distinct or aggregate assessment is fixed.

Lands chargeable with land revenue. (This section is to be read with S. 45).

(i) Lands appropriated for the purpose of agriculture.

(ii) Land appropriated for any purpose from which any other profit or advantage than ordinarily acquired by agriculture is derived.

(iii) Land appropriated for building sites.

Assessment.

(1) *Amount.* It is variable if land is appropriated to one of the above uses or is appropriated to any other of them.

(2) *Land held rent free* for one purpose is assessable if it is used for another purpose. Collectors and survey officers can prevent the appropriation of unalienated lands liable

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to payment of revenue for certain purposes. The holder can be evicted. These do not apply to service lands.

Note (i) S. 48 is not intended to meet the case of trespassers or encroachers; but applies to holders themselves converting the use e. g. turning field into a quarry.

(ii) Assessment guaranteed cannot be altered.

(iii) If a house site or open space appropriated to non-agricultural purposes is held by an occupant prior to British possession, it can not be assessed.

(3) In case of *land indirectly taxed* to the State e. g. by customary levies of extra cesses or fines &c., or lands liable to occasional assessments only, the commissioner can commute the tax into an annual assessment which is in no case to exceed the assessment it would be subject to if there had been no exemption; of course a superior holder can recover the amount payable by inferior holder if he himself is made to pay it (s. 50).

S. 51 authorizes the charging of excess of assessment levied on certain land on lands inadequately assessed held along with lands properly assessed.

(4) **By whom it is to be fixed.** It is to be fixed by the collector subject to rules under s. 214 of the Code; it is to be for particular periods as authorized by Government. Collector has in case of lands partially exempt or of lands liable to assessment under certain conditions, to have regard to rights legally subsisting (s. 52).

(5) **Settlement with whom to be effected.**

(1) It is in the first instance to be settled with the person who is primarily responsible for the land revenue.

(2) If he be absent without leaving an authorized agent—with the person in occupation or underholder.

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Note. Officers receiving revenue have to give *receipt in writing*, (S. 58). Even superior holders have to give to inferior holders; in case of alienated villages, the village officer has to countersign it. When payment is made in kind according to custom the payment is to be entered according to local measures. S. 58 does not apply to private lands of a superior holder.

Penalty for failure to give receipts is provided for in S. 59. The collector can commit after a summary inquiry of his own motion; and fine to the extent of 3 times the amount.

CHAPTER VI.

What is the value of an occupancy right; and what are the rights of occupants of unalienated lands. What penalties are prescribed for unauthorised occupation of unalienated lands.

Occupation of unalienated lands. (Ss. 60-64.) Permission in writing of the Mamlatdar or Mahalkari has to be taken previous to entering upon occupation of unalienated lands; a person unauthorised by occupying such land is liable to the following *penalties.*

(1) Payment of *assessment*, assessed for the entire number; one full year's assessment is charged.

(2) *Fine*, not exceeding Rs. 5 or ten times the assessment for the year if that sum exceeds Rs. 5. This is at the discretion of the Collector. He can remit the fine; Collector's decision as to the amouut of assessment is *final.*

(3) Summary *eviction* by the Collector. Procedure under s. 202 is to be followed.

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(4) *Forfeiture of the crop*; the forfeiture is adjudged by the Collector.

(5) Even the building and constructions thereon can be forfeited if not removed within the time allowed by the notice.

Note (i) S. 61 does not operate *retrospectively*.

(ii) Encroachments on *public roads* cannot be dealt with under s. 61.

(iii) S. 61 does not apply to *alienated lands*. Inamdar's remedy would be, by a suit in a Civil Court? The section does not apply to quit rent under the Summary Settlement Act.

Value of occupancy right. It can be sold by the collector by auction or price settled with the occupant. The purchaser may even be subjected to certain conditions. The price is to include price of the trees not specially reserved; it is to be recovered as arrear of land revenue.

Occupancy of alluvial lands. The collector can give these to occupants if he thinks they can be disposed of in perpetuity with due regard to the interests of public revenue; but then:—

(1) He has to give preference to the occupant of the bank on which the alluvial land has formed; if he refuse, the collector will dispose of under s. 62. The Code does not countenance a sale to a stranger though he offer much more price.

(2) The price is not to exceed 3 times the assessment of the land.

(3) This is subject to S. 64.

Note. If the area of the alluvial land does not exceed half an acre or one-tenth of the area of the holding of the occupant on the bank, the latter may be allowed temporary use and occupation of the alluvial land (S. 64).

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Rights of occupants. S. 66. The occupant of land appropriated to agriculture is restricted in the use he can make of the same.

He can—

(1) Erect farm buildings.

(2) Construct wells or tanks.

(3) Make improvements for the better cultivation of the land or its more convenient occupation for the above purpose. He cannot appropriate to any other purpose without the permission of the collector. The registered occupant can apply in writing, and the collector makes inquiry; he has to acknowledge the receipt of the application; if no answer is given within 3 months of the application the permission is to be deemed granted. The collector can subject the applicant to a fine in addition to the assessment when the land has to be appropriated to a purpose unconnected with agriculture.

Note (i) S. 65 does not apply to Patilki Inam lands.

(ii) Fine has to be paid even for removal of earth, stone, &c from lands for the purposes of trade.

(iii) If an occupant takes action without obtaining collector's permission recourse is to be had to s. 66.

(iv) If a mill is built, the fine would be levied on the whole area of the premises levied at an uniform rate for the whole area.

(v) Fine is leviable even for partial appropriation *e. g.* appropriation to agriculture in cultivating season and to non-agricultural during the rest.

(vi) Temporary appropriation is not within s. 65.

(vii) S. 65 makes no concession even to municipalities.

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(viii) Fine is to be calculated not at the date of application for permission but of actual appropriation. In Salsette half the fine is charged.

(ix) The permission cannot be conditional.

Penalty for appropriation without permission. (S. 66).

(i) Occupant or his tenant or person holding under him is liable.

(ii) If he appropriate them without permission or before expiry of 3 months from the date of acknowledgement.

(iii) Penalty is—summary eviction from the survey number, and the occupant is liable to fine in addition to the new assessment imposed under S. 48. The amount is regulated by general orders of Government.

Note (i) Any Co-occupant or tenant who by his act renders the registered occupant liable is liable to him in damages. 66

(ii) No occupant has as of right the privilege of preventing the sale of land liable to forfeiture for unauthorized appropriation.

(iii) Permission may be granted by the collector on any terms or conditions as may be agreed on between the registered occupant and Government. 67

Occupant's right conditional (s. 68).

The right of occupancy is conditional on the payment of assessments due on account of land revenue for the same and of the fulfilment of the terms lawfully annexed to his occupancy.

Mines. Right of Government to mines and mineral products in all unalienated lands is expressly declared reserv-

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ed by S. 67 ; this does not affect subsisting rights of an occupancy.

Registering name of occupant.—(1) Decrees or orders of competent courts adjudging the rights of parties as to a holding are given effect to by the Collector only if the party entitled applies to him in writing and produces a certified copy of the decree or order or the certificate; the change is then made in the entry of the registered occupant's name. In case of occupancy not being transferable without sanction of the Collector the transfer or sale made without it is void (s. 70).

(2) In case of death of registered occupant his eldest son or the person appearing to be his heir or the principal of his heirs is to be registered in his stead. The entry is amended when any other person produces heirship certificate.

Intestate occupancy holdings (s. 72). (i) The section applies only if an occupant is a Hindu, Budhist or Mahomedan.

(ii) The holding can be sold according to the provisions of law for sale of forfeited occupancies in realisation of land revenue.

(iii) The ordinary rule applies only to surplus left after deducting arreas of land revenue and expenses of sale.

Note. A vendor of a deceased occupant is not recognised unless his name is registered in the revenue record.

Restriction on heritability or transferability of the right. (Ss. 73-73a). Right of occupancy is, subject to s. 56, deemed heritable and transferable property (s. 73). This applies only to unalienated lands. This section was introduced in 1901. But then Government may restrict

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right of transfer without previous sanction of the collector in tracts to which s. 73 is rendered applicable.

Relinquishment of occupancy. (S. 74.) It is open to an occupant to relinquish his occupancy absolutely or in favour of any person. It can be by giving notice in writing to the Mamlatdar or Mahalkari. It can be at any time if it has to be in favour of a specified person; else it can be at the end of the current year *i. e.* July by giving notice before 31st March. It can be of the entire occupancy or whole survey number or a recognized share thereof and not of portions. Notice must be given by the registered occupant. The person in whose favour it is relinquished must agree to be a registered occupant.

Note (i) There are 4 elements to be noted.

Relinquishment—How

—When

—of what

—in whose favour.

(ii) S. 74 does not apply to *alienated lands* where survey settlement is not introduced. It is open to Mamlatdar to accept the relinquishment from an occupant; but if survey settlement is introduced the Mamlatdar has to accept the relinquishment except where the Inamdar is specially authorized under S. 188. S. 76 says that the provisions of ss. 76-79 apply to alienated lands, "as far as may be." In case of lands coming under s. 75 there can be relinquishment of all the lands and not part; those coming under s. 76 can be relinquished when the commuted assessment is determined. Ss. 75 & 76 do not affect the responsibility of sharer in certain villages of which the sharers are all jointly liable or the validity of lease from Government.

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(iii) Since the Code does not allow a *partial relinquishment* it follows that a well standing in the field at the time of relinquishment would go with the land.

In case of lands paying lump assessment. One of the survey numbers cannot be relinquished without the consent of the collector; the latter may or may not give permission. If he does grant, the occupancy is divided and each pays the proportionate assessment fixed by the collector (s. 75).

(iv) S. 74 is *based* on the general principle of customary common law that vacant possession should be given by the tenants to the landlord, if he does not, it gives rise to a claim for damages (*Baba*, P. J. 1896 p. 430).

Right of way to the relinquished land passes with it to the future holder thereof. (S. 77).

(v) *Duration of liability* (s. 79). of occupant. He continues liable for all lawful demands of Government in respect of the occupancy. Until the same is relinquished Collector is not bound by any transfer unless the same is recorded in the revenue records. Mere registration of a name, it may be noted, confers no right on the holder of alienated lands.

(vi) *Effect of Court Sale.* Occupant continues liable for revenue in spite of the sale of his interest until the court's certificate is produced and change of entry is applied for and effected (introduced in 1901).

(vii) *Unauthorised occupation.* S. 79 *a*, introduced in 1901 vests a new right in the collector to summarily evict a person in unauthorized occupation or wrongful possession; when he has ceased to be entitled to the use and occupation thereof or where occupancy right is not transferable under s. 73*a* without consent.

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(viii) The operation of this Section as also of s. 60 can be suspended by Local Government by notification in the Government Gazette (s. 82).

Remedy against forfeiture. (s. 80). The person other than the registered occupant, co-occupant, tenant or mortgagee, or a person interested in the continuance of the tenancy, can pay the revenue due by the registered occupant. Collector has to accept it. The Collector can assist the person paying it in recovering the revenue from persons liable therefor. Proceedings under S. 80 do not affect the rights of parties as may be established in a Civil Court.

Note. If the registered occupant has incurred forfeiture by non-payment of revenue with a view to defraud or injure those interested in the continuance of the occupancy or if the Collector considers that sale will prejudice the co-occupants, he can, instead of selling, make the co-occupant a registered occupant, provided he pays off all the sums due by the registered occupant.

CHAPTER VII.

Superior and inferior holders.

What are the provisions of the code as to the relation of inferior holders to superior holders in respect of (a) *the amount of rent payable by tenant*; (b) *duration of tenancy and termination of annual tenancy*; (c) *the tenure in raiatwari lands, etc. How is the collection of dues of superior holders regulated. What is the extent of obligation imposed by the Code in respect of assistance to be rendered to superior holders in that behalf.*

(a) *Amount of rent.* Tenant is regarded as holding at the rent or for services agreed upon; if there is no satis-

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factory evidence of the agreement, then the usage of the locality governs the same; if there be neither, then the test is, what is just and reasonable—having regard to all the circumstances of the case.

(b) *Duration of tenancy.* If there is no evidence of commencement of a tenancy or of its intended duration because of the antiquity of a tenancy, or of any usage of the locality regulating it, the presumption is that the duration is co-extensive with the duration of the tenure of the immediate landlord. (*Jaikrishna*, P. J., 1890, p. 179. *Kalidas*, 16 Bom. 647.)

Tenure. In the absence of satisfactory evidence, the presumption is that the person in possession of land in respect of which he pays rent, holds as a tenant.

Note (i) S. 83 does not affect the right of the landlord, if he has any, by usage or agreement to enhance the rent payable.

(ii) S. 83 covers every possible kind of tenancy.

(iii) Where survey settlement is introduced s. 83 and not s. 68 applies in determining the nature of the tenancy. (*Khanderaw*, P. J. 1889, p. 19.)

Cases (1) A tenant repudiating the title under which he entered becomes liable to immediate eviction at the option of the landlord (*Vishnu*, 12 Bom. 359).

(2) There is no reason to raise the presumption in para. (b) merely because a tenancy is 40 years old (*Kalidas*, 16 Bom. 647).

(3) Inamdars can enhance the rents even of Mirasdars in the inam village within the limit of custom. (*Visvanath*, 17 Bom. 475.)

Termination of annual tenancy. (S. 84). It runs from the end of one cultivating season to the end

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of the next *i. e.* 31st March (*Bahun*, P. J. 1878, p. 298). 3 months' notice before the end of the year is necessary on either side; it is to be in the form given in Schedule E. S. 84 does not affect special conditions embodied in a lease for the section applies only in absence of proof to the contrary.

Mode of collection of dues. (of Superior holders). S. 85. Whereever a hereditary patel or village accountant exists, these are to be recovered through these village officers. The latter are bound to receive payments made to them and account to the superior holder for sums recovered. If they fail the superior holder can recover directly from inferior holders. In any other case a superior holder demanding rent direct from the inferior holder is liable if found guilty in a summary inquiry by the Collector to forfeit 3 times the amount demanded. The superior holder can apply to the Collector for his assistance if the village officers or co-sharers refuse to pay up. The village officer receiving rent has to countersign the receipt under s. 58. S. 85 applies to payments in kind as well as to cash payments.

Assistance in recovering dues (s. 86).

(*a*) Superior holders can get assistance in recovering their dues *i. e.*, precautionary measures taken by Government under Ch. 11 for realizing their land revenue.

(*b*) Prior application to Collector is necessary.

(*c*) It is a right of the superior holder and not a condition precedent; he can even sue in a civil court.

(*d*) The application must be made in the year in which the rent becomes payable.

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Note (i) The superior holder need not give separate applications for each tenant; all can be put in one paper. The stamp must cover the whole amount concerned.

(ii) Assistance cannot be given to recover arrears for past years. The Inamdar can be referred to a civil court.

(iii) Relief is limited to recovering dues sanctioned.

(iv) Section applies to holders of alienated villages whether survey settlement is extended to the village or not.

(v) Where there are more sharers than one the assistance is to be given according to the extent of the profit of each.

(vi) In complicated cases the Collector can refuse to give permission and refer the parties to a civil court.

(vii) A mortgagee in possession is a superior holder and as such entitled to assistance under S. 86. So are all sharers in alienated villages.

(viii) The object of Ss. 86-87 which contain the rent law of the Bombay Presidency is to enable the persons entitled to receive rents to recover when their title is clear, but otherwise to have recourse to the ordinary courts unless they come to terms privately.

Such persons may or may not be the persons whose names are registered in the collector's books as the occupants. The collector is justified in refusing assistance if on inquiry he finds that there is a dispute between two persons as to which of them is a superior holder or the tenant.

(ix) The application may be sent even by post; it need not necessarily be in person or even by a pleader.

(x) In appeals pleaders are not legally entitled to appear and represent parties, for inquiries under S. 86 are not judicial proceedings.

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(xi). *Procedure.* The collector has to cause a written notice of the application served on the inferior holder or co-sharer; he is to fix a day and on that day to hold a summary inquiry and pass the necessary orders in respect of rent lawfully due. He can refuse assistance if the points in issue are of a complicated or difficult nature; in other cases he has no discretion to refuse assistance.

(xii) Collector's decision in cases under S. 86 is not a decree for the purposes of Court Fees Act.

(xiii) Though the Collector has the discretion vested in him, it is subject to correction by a Court of appeal, which will interfere if the Collector has evaded the law or has gone beyond his functions to determine questions not covered by S. 87.

Special powers granted to holders of alienated lands (s. 88.)

(i). The Governor in Council can grant the powers to any holder of alienated lands.

(ii). He can do it by a commission issued to him.

(iii). Powers may be any or all of the following:—

(1) to demand security for revenue and in default to take precautions under ss. 141-143; he cannot inflict penalty.

(2) to attach defaulter's property.

(3) to fix time and instalments for payment of rent to him.

(4) to exercise powers of Collector under ss. 65, 66.

(5) to receive notices of relinquishment under s. 74.

(6) to arrange for repairs of boundary marks.

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Note. (i) Powers mentioned in 3 to 6 can be given to holders of lands to which a survey settlement has been extended under s. 216. Inamdars desirous of being invested with these powers have to apply in writing to have survey settlement extended to their villages. The powers are not granted unless the tenants concerned are protected from rack-renting; and are now conditional on the inamdar undertaking in case of failure of rains to grant suspensions and remissions on a scale fixed by the Government.

(ii) It is in the ~~form given in Schedule~~ F; it can be withdrawn at the pleasure of the Government; it can be issued to one or more agents of the holder. In case of attachment of defaulter's property report has immediately to be sent by the holder to the Collector. The collector would order sale if the demand is just; sale can be conducted by the holder if he is invested with the powers under Reg. 13 of 1850; else by the collector. The process is to cease on his payment or tender or furnishing security; the holder would be liable to a penalty not exceeding 3 times the amount sought to be recovered if he continue the process in spite of payment or furnishing security. Power under the commission may extend to arrears only of the year next immediately preceding. The holder is not to force unusual nor excessive demand. The collector decides in case of dispute as to what is just and the holder is limited to it; on default by the holder the penalty is as under *i.e.* 3 times the amount of excessive demand has to be paid to the person against whom the excessive demand is enforced. Right to enhanced rent may be established by a suit in civil Court; it is not barred by this Code.

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CHAPTER II.

Realization of Land Revenue. (S. 136.)

Who are primarily responsible for land revenue in alienated and unalienated lands. What is the nature of Government claim. When Land Revenue is leviable. What precautionary measures does the Code authorise for securing land revenue.

Who is primarily responsible for L. R. (s. 136). In case of unalienated lands the registered occupant is primarily responsible; in case of alienated lands, the superior holder is; on failure of these, it can be recovered from a co-occupant or co-sharer in the one case and from the inferior holder or one in occupation in the other; but then if these latter have paid, they are to be allowed credit for recoveries made from them by superior holders or registered occupants and for sums recovered from them. It is not clear whether revenue can be recovered from co-sharers when the principal sharer is willing to pay.

Priority of Government claim. (Ss. 137-138). Claim of Government for land revenue has precedence over any other e. g. by mortgage, decree, attachment, against any land; crop of the land is liable to be proceeded for land revenue of the current year. (S. 138). Land revenue is leviable at any time during the revenue year. Payment is required only on the day fixed except when precautionary measures are held necessary. It is to be according to the rules framed by Government. (S. 146).

Precautionary measures. (Ss. 140-144). The following precautionary measures are authorized by the Code for securing land revenue.

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(1) *Removal of crop* which has been sold, or mortgaged by order of court or private agreement can be prevented until current year's revenue is paid. The fact that date for payment has not arrived is immaterial; it can be only for one year's revenue (s. 140). These are to be resorted to only for current demands.

(2) Government *lien* on the crop can be enforced by preventing the reaping of crop without a notice to the collector or preventing removal of the same without previous permission or placing watchman over it to prevent unlawful reaping or removal of the same. Remuneration of watchman is charged on the occupant and recovered as arrears of land revenue. But then, the collector is not to defer the reaping of crop nor prolong the deposit unduly so as to damage the produce.

(3) Collector can take up temporary attached village or a share thereof and take up *management* if he, owing to dispute among sharers, apprehends that land revenue will not be paid as it falls due (S. 144).

Note (i) *Inamdars* to whom commission is issued under s. 88 can take precautionary measures.

(ii) The order under s. 141 can be made known even by issuing *general order* to all the holders; it is to be by proclamation by beat of drum and affixing a copy in the chowri. (S. 147.)

(iii) *Penalty.* Persons disobeying the order properly proclaimed and those abetting are liable on a summary inquiry to a fine not exceeding double the amount of land revenue on the land.

(iv) Crop is to be *realised* if the revenue is not paid within 2 months of the deposit of crops. The Collector can take and sell it and realize the land revenue.

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(v) In case of attachment under s. 144, the *surplus profits* are to be kept in deposit for the benefit of the person entitled, or paid over as directed by the Commissioner. The cost of management, amount of land revenue and cost of survey are to be first deducted.

These precautionary measures are to be *relinquished* when the person primarily or secondarily responsible pays up costs and gives satisfactory security to the Collector. (S. 148).

Who is a defaulter.—What liability is incurred by default.—How is arrear to be proved and recovered.—What are the provisions as to forfeiture of occupancy on default and sale of defaulter's property and the special procedure in respect thereof.

Liability for default. (Ss. 147, 148). He is defined in the Revenue Recovery Act I of 1890 to be a person from whom an arrear of land revenue is due and includes a person who is responsible as a surety for the same. The sum not paid is called arrear (S. 147). Now a collector can recover arrears by taking action against the defaulter in any place wherever he be. In case of default, the entire balance can be recovered in addition to a penalty according to a scale fixed. Penalty is to be resorted to only when the Rayat wilfully delays and does so though he is able to pay. Penalty once recovered can even be remitted if it appears that the rayat did not commit wilful delay.

Proof of arrears. (S. 149). A certified copy of the statement of account by the Collector, (Assistant, or Deputy) is *conclusive evidence* for the purpose of this chapter of—

(i) the existence of arrear

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(ii) the amount of land revenue

(iii) the person who is the defaulter.

On receipt of this statement Collector of one district can recover demands of the Collector of another district. But there can be no such recovery by coercive process outside British India.

Process of recovery of arrears. (S. 150).

(1) *By service of written notice of demand*; such a notice of demand may be issued on or after the day following that on which the arrear accrues; costs are recovered from defaulter as an arrear of land revenue. Rules are framed by Commissioners under s. 152. The notice is issued 10 days after accrual of arrear. The cost of notice is annas four or eight according as the amount of arrear is within or above Rs. 5. Fees are charged for issue of notice, though it is not served. It can be remitted in case of extreme hardship.

(2) *By forfeiture of the occupancy or alienated holding* under s. 153. If he forfeits he may proceed to sell under Ss. 56, 57, and proceeds are to be credited to the defaulter's accounts; but then there can be no forfeiture without a previous proclamation or intended declaration and until 15 days have lapsed after afixing of notices. Watan lands can be forfeited for nonpayment of judi.

(3) *By distraint and sale of moveable property* (S. 154). It can be made by officers of a class authorized by the commissioner; they must be able to read and write. Dwelling houses cannot be broken into for destraint. No special form is prescribed.

(4) *By sale of immoveable property.* (S. 155). The right, title and interest of the defaulter in immoveables other than the land on which arrear is due can be sold.

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S. 155 differs from S. 153 in this that whereas in the former case incumbrances created by the occupant remain, in the latter they disappear. All the property that is exempted from attachment under S. 266 C. P. C. is exempted from destraint or sale under Ss. 154, 155. The collector's decision as to what property is entitled to exemption is final. In case of houses exemption extends only to dwelling houses belonging to and occupied by agriculturists as such; it may extend to his representative. (*Radha Kisen* v. *Bani*, 530).

(5) *By arrest and imprisonment.* (Ss. 157, 158). First of all he can be detained in custody in the office of the Collector or Mamlatdar for 10 days; he can be released as soon as he pays up revenue due, costs of notice, and subsistence charges. If the amount is not paid up in 10 days he can be sent to civil jail by the Collector; there is a limit of time of detention in jail as in execution of civil court decrees, *i.e.* 6 weeks if amount does not exceed Rs. 50, six months in any other. This is only in extreme case. Power to arrest can be exercised only by the officers who are authorized by the Commissioner, with the sanction of the Governor in Council.

(6) In case of *alienated holdings* consisting of entire villages, by attachment of the same (Ss. 159, 163.)

Villages attached can be taken under management by the Collector with the previous sanction of the Commissioner. This is to be done when other processes are deemed to be inexpedient. The lands so attached revert to Government free of incumbrances created by the superior holders or other sharers but without prejudice to the right of individuals. Till the lands are restored to the superior holder rents and profits are to be received by the

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Collector to the exclusion of the Superior Holder. Collector cannot demand more than the stipulated rent (*Collector of Ahmedabad* v. *Morar*, P. J. 1892 P. 323). Surplus profits are to be applied in defraying arrears.

162-65 *Note.* (i) The village can be restored on the holder applying within 12 years from 1st August next after the attachment, provided either the arrear is liquidated or balance paid; the surplus of the last year is to be given over to him but that of previous years is at the disposal of the Government.

(ii) In case no such application is made, or if balance is not paid within the period prescribed, the village is to vest in Government free from all incumbrances created by the superior holder or his sharers but without prejudice to the right of the actual occupant.

(iii) The rule applies where Khoti Settlement Act is extended (*Bhikhia*, 8 Bom 525).

(iv) All processes are to be stayed if satisfactory security is given by the defaulter or if amount demanded is paid under protest. (S. 164).

Procedure in respect of sale. (1) Collector is to issue *proclamation* of sale in the vernacular of the District; it is to contain time and place, revenue assessed upon land &c., it is to be made by beat of drum; in case of immoveables it is to be both at the village and the head quarters, whereas in case of moveables only at the village. *Writen notice of intended sale* is to be affixed at particular places, office of collector, Mamlatdar and at the chowri of the village.

(2) *Time.* Sale is to be made by auction by the persons directed by the Collector. It can not take place on Sunday or a Government holiday; about at least 7 days in case of moveables and 30 days in case of immoveables must lapse from the date fixed in the notice. It can

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be postponed for a sufficient cause. These rules do not apply to cases of perishable articles, which must be sold without delay. The sale is finally concluded without being subject to confirmation.

(3) *Stay* (S. 169). The sale can be stayed on the defaulter or any other person on his behalf paying off the arrear or furnishing security. Giving of security merely stays the sale but does not affect the forfeiture.

(4) *Payment.* If the sale of moveables is finally concluded the price is to be paid off then and there, or just after as directed. Receipt is given on payment of purchase money; in that case sale is absolute against all. If the sale is subject to a confirmation, the purchaser has to deposit ¼ of the amount of the bid then and there, the balance is to be paid before sun set on the day he is informed of the confirmation. In case of default, the property is again put up to sale. In case of moveables ¼ of the amount should be deposited then and there and the balance is to be paid on ~~or before the fourteenth~~ day after the sale is concluded.

(5) *Default.* In case of default, the deposit is forfeited to the Government and the property resold; the defaulter purchaser continues liable for the loss by the resale. Resale is to take place after issue of a fresh notice as in original sales, except when it takes place at once. If there is no bidder at the second sale the whole amount cannot be recovered from defaulting purchaser.

(6) *Setting aside and confirming sale.* The provisions are similar to those in Ss. 311 to 315 C. P. Code. Sale can be set aside on an application by a person materially prejudiced if there is material irregularity, or mistake or fraud in conducting the sale. The application must be

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within 30 days of the sale, to the Collector. If the sale is set aside, a fresh sale is directed and deposit is returned to the purchaser. The sale is to be confirmed if there is no such application or the one made is rejected. Collector can set aside a sale even without an application. On confirmation of the sale, the purchaser is to be put in possession and his name entered in the records of Collector and a certificate of purchase granted to him. The certificate has to be stamped as required by the Stamp Act written on an impressed stamp paper. It is to contain the name of the actual purchaser and it bars a suit against the certified purchaser in a Civil Court on the ground that it was a Benami transaction. The purchaser is liable for land revenue due subsequently to the date of the sale. If a third person sets up a claim to attached property the collector is to decide it on a summary inquiry after reasonable notice.

(7) *Proceeds of sale and surplus.* The proceeds first go to defraying expenses and arrears of land revenue, and the surplus goes to the person whose property is sold. Expenses of sale are calculated according to the rules framed; the expenses can even be remitted. The surplus can be paid to the creditors of the debtor-holders only under orders of a civil court. The surplus is to be given over if the lands were originally given free of occupancy price.

What are the provisions of the Code as to appeal and revision. (Ss. 203-212.)

Appeal.

(1) *When lies.* Appeal lies against every order passed by a revenue officer unless it is prohibited expressly. Pleader cannot claim to appear in appeal.

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(2) *To whom.* To the immediate superior of that officer. It would be even if the decision appealed against is itself passed on appeal; but in the case of orders of a Commissioner, it would not lie to the Governor in Council if the order itself is on appeal.

(3) *Limitation.* If the order appealed against is that of an officer below the rank of a Collector or Survey Superintendent, the period of limitation is 60 days; in other cases 90 days.

Note (1) On the analogy of s. 12 of the Indian Limitation Act the time required to get a copy of the order appealed against is excluded in calculating the period.

(2) *Delay* in presenting an appeal may be excused for sufficient cause. Provisions of S. 5 of the I. L. Act apply i. e. in case last day is a Sunday or recognized holiday, it may be presented on the next opening day.

(3) *Accompaniments.* Petition of appeal must be accompanied by the certified copy of the order appealed against.

(4) *Powers of appellate authority.* He can annul, reverse or modify or confirm the order or order further investigation or fresh evidence or take it himself; he can suspend the execution of the order appealed against pending the appeal.

Revision (Ss. 211-12). The Governor in Council and revenue officers not inferior in rank to a Collector or Survey Superintendent in their respective departments can interfere in revision *i. e.* call for and examine the record of any inquiry and proceedings of a subordinate revenue officer, to satisfy himself as to the legality or propriety of the order; even Assistant and Deputy Collectors, Mamlatdars and Mahalkaris can revise except in cases in which there is formal or summary inquiry; orders passed on revision can be reversed or modified by the Governor in Council alone.

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PART II.

Watans.

Introduction.

Inam. Inam is a term of Arabic origin; in its primary sense it means gift; in a secondary sense it means a grant either made by a private individual or a ruling power. Grants from State are generally grants of land revenue and these were formerly made either directly in land or constructively in grain and kind or cash. Sometimes the right to receive assessment from a piece of land—every acre of land being liable to the payment of assessment to the ruling power—was transferred to a person or conferred on him for the maintenance of a temple or religious office. It is out of mere favour or as reward for service rendered by himself or his ancestors. These grants are conditional or unconditional; conditional grants are those in which Civil and Military Service is exacted by the State direct or certain duties have to be performed by the office bearers in a village for the sake of the inhabitants in revenue and other matters.

Though originally meaning a grant it has now come to be recognised as a land tenure. *Wilson* says that in the South of India, the term *Inam* is especially applied to grants of land held rent free and in hereditary and perpetual obligation. It is now a general term applied indiscriminately to alienated holdings; but is not sufficient in itself without the addition of some further qualifying word to fix the nature of the holdings.

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Classifications.

(1) *Chakariah* (for service) held on the condition of performing some office or service or discharging some obligation or trust; and these may be subdivided into (*a*) service inams, (*b*) Saranjams, (*c*) religious endowments.

(2) Those not encumbered by any such burden or condition *i.e. personal inams.*

Settlements. The first step was the regulation of 1827 issued by *Mr. Elphinstone*, (17 of 1827).—Section 2 of which states the fundamental law as to land revenue. All land was declared liable to pay land assessment according to its kind and a title to exemption duly proved was to be respected. Inams were not specially included in the list though it mentioned many others so recognized by custom. This led to difference of opinion and at last in 1841 *Mr. Gladstone*, Superintendent of Revision Revenue Survey in S. M. Country investigated into the question of alienated lands and along with Moro Punt Amri of Pana decided the titles of persons holding villages as inams in that part of the country.

This inquiry progressed until 1852 when the inam commission was appointed and its powers and duties defined. The Inam commission settled personal inams, acting on the principle that all lands under Sanads declaring them to be hereditary shall be continued according to the terms of the Sanad. The Commission then proceeded to settle holdings which were for the support of religious establishment e. g. temples, mosques; these were held to be permanent. They then proceeded to settle holdings which consisted of inams granted for the performance of service to the village as distinguished from the service to the State. These official tenures which were by usage hereditary were settled permanently as official emoluments.

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Summary settlement.

This had to be introduced in 1863, for the Inam commission did little and slow work for 18 years from 1842 to 1860 and many cases were left undecided. The new project was sanctioned by Acts 2 and 7 of 1863, the one relating to Deccan and the other to Gujrat and Konkan. Thereby the temple and official holdings were to continue as before permanent and non-transferable, and all personal Inams could at the option of the holder be heritable and transferable as free hold on payment of certain specified fee (Nazarana.)

Exceptions. These Acts and the Summary settlement expressly exempted from their operation certain classes of political, service and office holders'—inams. These were :—

(i) Village officers (*a*) Useful both to Government and village.
(*b*) Useful to village only.
(*c*) Hereditary Dist. Officers.

(ii) Hereditary District Officers.

(iii) Saranjamdar and Jagirdar.

Now with the settlement of these in detail :—

(i) (*a*). *Useful to both.* In case of inferior servants Mhars they were continued in the existing state. They were small holdings burdened with quit rent.

In case of superior servants (Patel and Kulkarni) the principle was to provide adequate remuneration for the member officiating for the time being. They had 3 sources of income e. g. payment from Government treasury, land exempt from rent and levies from raiats. The true value of the total income was ascertained and adequate remuneration provided; where there was deficiency an adequate assignment was made from the treasury; when more than

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sufficient, the land in excess was assessed at half the survey rates. But then Patels and Kulkarnis who were not watandars merely received the remuneration assigned to officiators which was fixed according to a scale—certain percentage on the village revenue.

(*b*) *Those useful to community only, e.g. Joshi, Kazi;* their holdings were held not transferable and subject to local service. They were assessed at one-fourth of the proceeds.

(*c*) *Useless Servants, i. e. Mahajans, Beldars, etc.* ; half of the emoluments were permanently continued as transferable freeholders; the other half lapsed to the State. Untaxed land was subjected to assessment.

(ii) **Hereditary District Officers.**

The duties of these were superseded by the then revenue system of the British and since their services were no longer required the Government appointed Messrs. *Gordon and Pedder* respectively to settle holdings of these ancient Jamindar families in Deccan and Gujrat respectively. The result was that in consideration of the Jamindars paying to Government in perpetuity 5 or 6 annas in a rupee of the assessment of their holdings Government disclaimed all future rights to their services. In Deccan at the request of the zamindars their watans were kept inalienable as they were before; but in Gujrat in some places they were rendered alienable private property. Services were thus commuted and the settlement was termed non-service settlement.

Gordon settlements. What is termed "*Gordons' settlement* was an arrangement entered into in 1864 by a committee of which Mr. Gordon was chairman acting on behalf of Government with the Watandars in the S. M.

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country by which the Government relieved certain Watandars in perpetuity from liability to perform the services attached to their offices in consideration of a judi or quit rent charged upon Watan lands. These settlements were given binding legal effect by clauses 2 and 3 of s. 15 of the Watan Act of 1874. At the time these settlements were made, lands were alienable by Bombay Regulation 16 of 1827 beyond the life time of the actual incumbent; and the Gordon settlement—unless where it was specially otherwise provided by a particular settlement—was not extended by either party to convert the watan lands into the private property of the watandar with the necessary incident of alienability, but to leave them attached as hereditary offices which though freed from the performance of services, remained intact. (*Appaji*, 15 Bom. 13).

Features of the Settlements.

(i) Personal inams and inams of useless village servants are transferable property.

(ii) Inams of village servants useful to community are inalienable.

(iii) Saranjams are not hereditary and are inalienable.

(iv) Religious holdings are inalienable except for special purposes.

(v) Rates imposed as assessment or fixed in perpetuity.

(vi) If a watan is alienable the rules in the Act apply to the alienation.

History of legislation as to Watan.

(i) Under the Maharathas the watans though hereditary and conferred by Sanads were forfeitable at will in case of misbehaviour or disloyalty of the watandar *i.e.* the family of the local revenue officers remunerated by means of grant of land.

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(ii) Under the British the 1st piece of legislation was Reg. 17 of 1827 which said in S. 1 that the allowances of an hereditary officer were not to be subject to alienation and were not to be out of the family in which the office was vested.

(iii) Act 11 of 1843 was passed to regulate the services of these hereditary officers and secure the due discharge of their duties. The watandar families expanded; number of claimants claiming office by rotation increased; the office gave social status in the village and at last,

(iv) Act 3 of 1874 was passed whereby the rights of the several parties have once for all been ascertained and the right to officiate determined according to fixed rules.

Alienated lands.—*Their classification.—History of commutation.—What is.*

Alienated lands are all lands held revenue free or at a reduced rate. It implies that Government has parted with its revenue rights absolutely or to some extent.

Alienation of reveune rights called *inam* does not always include the land as well as the revenue; sometimes the grant is of the revenue only *i.e.* land is occupied by another, the revenue only is paid to assignee.

Classification.

Political. These are to be found in Nasik, Khandesh and the Southern Maharatta Country; they include Mahomedan grants of Jaghir for support of troops and the Maharatha Saranjams. Now no condition of service is exacted; it is commuted to a money payment; the grant is either for life or in perpetuity. Saranjam is a Persian word meaning supply or provision for troops, or the performance of a particular duty.

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Service Inam (*Watan*). The law as to this is laid down in Bombay Act 3 of 1874 and Act 5 of 1886. These hereditary officers are classed according to their utility to Government and community. "The watan becomes inalienable; services not required can be commuted; in some cases a portion of the assessment is levied."

Personal Inam. These are put under the class "*Jat inams*"; they are settled and sanads issued; their origin is indicated by their names; these are either *Nakra* quite revenue free, or *salamia* subject to quit rent.

Illustrations.

Wazifa (to religious Moslems).

Haria (to support family of the person slain in defence of the village).

Rannatia (to the family of one slain in an attack on the enemy).

Halia (for support of a tomb of a bard or of Brahmin).

Religious, to temples and for support and expenses.

Commutation (history). Original titles were doubtful in many cases and fraudulent ones were brought to light in some cases. Though there were regulations of 1827, there were frauds, the discovery of which led to the passing of the Act 11 of 1852, which appointed Commissioners for districts not brought under the regulations. (S. M. Country.) All titles were to be inquired into; the work having been slow the Government thought it proper to waive the question of exact proof and treated the matter summarily on certain broad principles, offering reasonable terms to claimants. Summary Settlement Acts of 1863 were then passed to provide for final but summary adjustment of unsettled claims to exemption from Land Revenue, Act 2 related to districts governed by Acts of 1852, Act 7 to

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the others. The underlying principle was that the Government chose to waive the inquiry into title if the inamdar chose to accept a summary assessment on the entire estate as made by the Collector and to submit to the conditions of the Act. The estate granted under the Summary Settlement Act is in full proprietory right and is heritable and transferable. Adoption is allowed. The inamdar pays revenue survey rates for surveyed and assessed lands and for unassessed ones those agreed upon between him and the Collector. He is entitled to all the waste and forest therein included. The operations of the commission and Summary Settlement Acts have resulted in a great saving to the State for many persons accepted the summary settlement.

Divisions of the Watan Act.

Part I. Defines certain terms.

Part II. Recites provisions against alienation of watan property and validates the commutations of watans already made and to be made hereafter.

Part III. Provides for the enforcement of payment of the watan emoluments and payable in certain cases in kind or money by persons other than the Government.

Part IV. Provides for cases where there is no property attached to office or where the watan has lapsed on account of the extinction of the watandar family or in any other way.

Part V. Speaks of the duty imposed on the Collector of making specific assignments in order that sufficient emoluments may be within the easy reach of the officiator.

Part VI. Shows how the person entitled to officiate as Patel or Kulkarni is to be ascertained.

Part VII. Regulates the period of service of persons ascertained in part VI.

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Part VIII. Provides for nomination to office in case of disqualification—mental, physical or moral of the officiator.

Part IX. Speaks of punishments in case of delinquency.

Part X. Speaks of the rights and duties of inferior village officers.

Part XI. Indicates the register to be kept.

Part XII. Deals with miscellaneous matters.

Part XIII. Provides procedure for appeals in watan cases and the jurisdiction of the authority concerned.

The Hereditary Offices (Watan) Act 3 of 1874.

Define the extent of the Watan Act and explain the following terms:—Watan property, Watandar, Hereditary office, Head of the family, Representative Watandar, Officiator Guardian.

(*a*) Extent of the Act.

It extends to all villages alienated or otherwise in the Regulation Districts. It is enough if it does not conflict with the terms on which the alienated village is secured to the holder. This Act does not affect the power of the Government to deal with a watan under Act 11 of 1852 or Act 2 of 1863. Parts 6-7-8 & 9 do not apply to hereditary offices of a lower degree than Patels and Kulkarnis and their watans.

(*b*) Technical terms.

(1) *Watan property*. It is the property moveable or immoveable held, acquired, or assigned for providing remuneration for the performance of the duties appertaining to an hereditary office. It includes cash payments, right to levy customary fees &c. Right to watan is distinct from money realized. (*Bajirao*, P. J. 1885 P. 130.)

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The term "Watan" is used in a very wide sense as including all hereditary property of any sort, landed property or allotments of revenue from other sources.

The reason of the unusual extent of the alienated lands all over the Deccan is to be found partly in the fact that in 1818 a war being proclaimed against the Peshwas the continuance of all watans, inam lands, pensions, &c., was guaranteed by the British Government to all those who would withdraw from the service of Baji Rao; while on his surrender all jagirdars who had adhered to his cause and all Brahmins and religious establishments supported by his family were likewise secured in their possessions; under these two concessions every species of hereditary right and jaghir, all other rent free lands, all established pensions, charitable endowments were restored on the settlement of the conquered provinces.

(2) *Hereditary office.* It is an office held hereditarily for performance of duties connected with

(*a*) Administration of public revenue.
(*b*) Village police.
(*c*) Settlement boundaries.
(*d*) Matters of civil administration.

Note (i) The fact that services originally appertaining to the office have ceased to be demanded as immaterial. (*Bai Jadav*, 25 Bom.) Discontinuance of service does not alter the nature of the estate. (*Ramrao*, 10 Bom. 327. *Savitraya*, 12 Bom. 224) in the absence of forfeiture of the holding. (*Bhima*, 24 Bom. 482.)

(ii) *Watan* is a term constituted by

(*a*) The property.
(*b*) The hereditary office.
(*c*) Privileges attached to these.

(iii) Share in a Watan does not necessarily imply that the sharer has the same share in the watan property.

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(iv) The offices of Sutar, etc., are not hereditary; they are useful to community only and not to State. (*Yesu* v. *Sitaram*, P. J. 1896-1, 21 Bom. 7331.) Office of a Kazi is not necessarily hereditary unless by custom. (*Baba* v. *Nasarudin*, 18 Bom. 103.)

(3) *Watandar.* He is one having a hereditary interest in watan. A person adopted subject to Ss. 33 to 35 is included in the term. To be hereditary the interest must have been acquired by inheritance as opposed to acquisition by gift, purchase, &c. Acquisition of a watan after the introduction of the British rule must be a legal one (*Chunia*, 21 Bom. 878).

Note (i). "*Same Watan*" means a watan attached to one and the same office irrespective of the fact that it is broken up into separate shares or takshims. There cannot be a separate watan in connection with one office. A holder of a share in the watan is a watandar of the same watan as the holder of the remaining share (*Yeswant*, 2 Bom. L. R. 420.)

(ii) *Watandar of the same watan* would include in case of joint Hindu family all that are having an existing interest in any portion of that watan. In case of a Mahomedan it would include those that have a vested existing interest and not necessarily his male lineal descendants. The fact that a person will some day succeed to the watan (possibly) is not enough.

(iii) A *mortgagee* can be a watandar if his debt is unpaid and he can be registered as a R. W. when he has established a customary right to service.

(iv) *Jurisdiction.* A collector cannot decide on a claim to be recognized as a watandar; he can only decide that the person who is decidedly a watandar is a representative Watandar. Claim of right to serve cannot be decided by a civil court.

(v) The daughter of a Hindu Watandar is not during the lifetime of her father a watandar of the same watan. (*Muktabai*, 23 Bom. 765).

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(4) *Head of a family*, It includes chief representative of each branch of a family ; and "family" includes each of the branches of the family descended from an original watandar; the sub-division must have been under S. 26. Chief ordinarily means eldest in age; in case of wives it means senior by marriage.

(5) *Representative Watandar.*

(*a*) A R. W. is the Watandar registered by the Collector under S. 25 as having a right to perform the duties of an hereditary office. This is inapplicable where services are dispensed with.

(*b*) *Officiator* is the person actually performing the duties of an H. O. for the time being ; the fact that he is a deputy or substitute is immaterial.

(6) *Guardian.* It is applied to a relation or any person who—

(1) has care, nurture or custody of a child by natural right or recognized usage.

(2) Has accepted the same directly.

(3) Has the certificate of guardianship (in case of dispute.)

Q. 2. What are the provisions of the Act as to alienation of watan and watan right.—What powers are vested in the Collector for the protection of watans and of preventions of alienation thereof.—How are such powers to be carried out.

(*a*) **Alienation of Watans.**

The whole law on the point is summed up in s. 5. The object of placing restrictions is as is well known to provide adequate remuneration for the performance of services of the office. Alienation was allowed prior

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to the passing of the Regulation 8 of 1827. Even s. 5 as framed in Act 3 of 1874 allowed a watandar to alienate his life interest in the watan even to a stranger, and he could alienate absolutely to a watandar of the same watan without restriction of time; but that section is amended by Act 5 of 1886 and so now no such alienation beyond the terms of natural life can be made. This does not apply to inams with respect to which summary settlement is affected; but the exemption does not extend to those settled in *Gordons* and *Peddar's* settlements.

Under the present law :—

(a) A *Watandar* cannot mortgage, charge or lease or alienate the watan (this applies to watans in respect of which service commutation settlement is effected) except where the right of alienating without sanction is conferred by the settlement.

(ii) Without the sanction of the Government.

(iii) For a period beyond the terms of his natural life.

(iv) To any person who is not a watandar of the same watan.

(*b*) *A representative watandar* cannot alienate at all without the sanction of the Government.

Note (*a*) *Meaning of alienation.* It includes gift and will; gift or testamentary disposition would be invalid if without sanction. In case of commuted service lands alienations of long standing are generally not interfered with. A mere compromise with respect to a dispute or mortgage is not an alienation.

(*b*) If the original family is ousted so that it cannot assert the right against the intruders, this does not affect the ultimate

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reversionary right of the Government. The intruder cannot take advantage of the fraud or negligence of the watandars.

(*c*) *Adverse possession* begins to run against the heir from the time when he is entitled to succeed to the possession of the Watan property *i. e.* the death of the Watandar (*Ravloji*, 5 Bom. 437).

(*d*) *Effect of levy of full assessment.* If lands formerly held rent free in lieu of services as Kulkarni, are latterly fully taxed and the services are paid for in cash, the land ceases to have watan character and can be alienated without sanction (*Vishvanath*, P. J. 1890 28).

(*e*) Alienation by an officiator of *shetsundi* lands to a member of the watandar family is not prohibited. (*Kolasapa*, P. J, 1892, p. 68).

(*f*) Lands attached to a *Muth* are inalienable if the sanad states that it is watan held for the performance of service. (*Jamal* 10 Bom).

(*g*) Under the rules as to *estoppel* an alienor of watan land cannot himself impeach the alienation on the ground that it was forbidden by the Act. (*Narayan*, 14 Bom. 404).

(*h*) *Adverse possession* for 12 years during the life time of one holder of service lands, in the absence of fraud or collusion, was held to be a bar to succeeding holders in *Radhabai's* case (9 Bom. 198 F. B.) But it is not so now (24 Bom. P. C.)

(*i*) Judgment against one holder operates in the absence of fraud or collusion as *Res Judicata* against the successor.

(*j*) *Service watan* lands become alienated when services are abolished except where there is family custom to the contrary.

(*k*) *Is irregularity cured?* An alienation invalid when made cannot be validated by subsequent repeal of the regulation invalidating it. (*Kalu*, 4 Bom. 433.) So also it cannot be valid

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because of the change in the nature of the estate after the alienor's interest had terminated (*Devcore*, 10 Bom. 372) nor because the service in respect of that watan is excused (*Bhugu*, P. J. 1892)

(*l*) *Deshgat Watan* or property held as appertaining to the office of a Desai is not to be assumed *prima facie* to be impartible in the absence of proof of special tenure or local custom to the contrary. (*Vinayak*, 5 Bom. L. R. 401. *Adreshapa*, 4 Bom. 494.)

(*m*) *Adverse possession by non-performance of service*; where lands are held as remuneration for services, the fact that no services have been performed does not of itself make the holding adverse; to be so, there must be a refusal to perform service or a claim to hold the lands free of service (*Kumargowda*, 23 Bom. 602.)

(*n*) Though a watandar can create a perpetual mutalik with a share of the watan he cannot exclude his successors from the management of the watan. (*Bhimaji*, 14 Bom. 82.)

(*o*) Watan property *assigned as remuneration of an officiator* (under s. 23) and the profits of that property *cannot be assigned* to any person whatever without the sanction of the Government; thus an agreement by a deputy to pay the watandar something out of cash allowance for procuring the nomination of the deputy is void. (*Appa*, 18 Bom. 750).

Powers of a Collector for protection of watan (Ss. 6, 8, 9, 10, 11, 13.)

The collector with the sanction or authority of the commissioner, can institute and prosecute in his name the necessary legal proceedings for the protection of a watan if they are found to be requisite or desirable. This is by a suit or petition in a proper court. The costs come out of the estate unless recovered from the other estate. Collector can instead of proceeding under this section (6) proceed as in Ss. 8, 9, 10, 11, 13. Proceedings are taken under s. 6

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only when there are particular complications in consequence of alienation before this Act was passed e. g. where watandars continue to defeat the objects of Government.

S. 9 of the Act empowers the collector under certain circumstances to declare the alienation of watan property to be null and void and order that watan is to belong to the watandar previously entitled thereto. The 3 exceptions to the procedure are provided in S. 8 which provides the means by which the collector can enforce contribution for the remuneration of the officiator when watan property has passed into possession of a person other than an officiator.

Rule S. 9 applies—

(i) To alienations before the passing of the Act otherwise than by virtue of a British court decree and without collector's permission and transfer of ownership in revenue records.

(ii) To outsider who is not a watandar of the same watan.

Order. (i) The collector may declare the alienation to be void after recording reasons.

(ii) And order that the watan and profits do belong to the watandar previously entitled from the date of the order.

(iii) He may even recover and pay to watandar the profits.

(iv) If it is land, collector may instead of transferring possession demand full rent; his decision as to amount is final.

Notes. (*a*) S. 9 *would not apply* if the alienation is to a watandar of the same watan, nor if it is in execution of a civil court

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decree or with collector's consent, nor to watans acquired before the introduction of the British rule.

(b) There is no *limitation* fixed for an order under S. 9.

(c) The *consent* of the collector must have been express. It can not be implied or presumed merely from entries in village Khardas which may never have come to his notice (*Shri Balkrishnaji*, P. J. 1892 P. 324).

(3) *Exceptional cases.*

Instead of resumption, contribution can be ordered for the remuneration of the officiator.—

(*a*) Where any part of the watan or its profits have passed by a British decree before the passing of the Act to a person other than the officiator for the time being.

(*b*) Where before the passing of the Act any part whatever of the watan or profits has without a British decree passed to a watandar not an officiator.

(*c*) Where after the passing of the Act by means of a British decree any part except that assigned for the officiator has gone to any other watandar.

Removal of attachment on Collector's certificate. (S. 10). Ss. 8 and 9 relate to alienation before this Act. Future alienations of an illegal kind are provided against in Ss. 10, 11. Under s. 10 Collector's certificate leads to the removal of any process attaching the officiator's share at the instance of any person whatever and will have the like effect as to the rest of the watan when an illegal transfer has been made to any outsider. The certificate does not apply to property (except that assigned to the officiator) disposed among the watandars themselves by a suit *inter se*. S. 11 provides summary proceedings by the Collector himself in future alienations of a nature described in s. 10 taking place otherwise

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than by virtue of a British decree *i. e.* the alienation of land is void. These sections apply only where the property affected is recorded or registered under the Act as such.

Essentials. (i) The watan or profits must have been assigned as remuneration for an officiator.

(ii) It must have been recorded and registered.

(iii) It must have passed to a person other than the then officiator.

(iv) By virtue of a British decree.

(v) After the passing of the Act.

Effect. The attachment is on receipt of the Collector's certificate raised, and sale of the watan set aside and the decree so far as it concerns the watan cancelled. The certificate must be sent to the court by whose order the watan is affected.

Note. (*a*) Watan lands and *haks* to which Gordon Settlement is applicable are inalienable (P. J. 1890, 112). Until the attachment is raised the money has to be held in deposit.

(*b*) *Part of Watan.* Certificate can be issued in respect of a share of a watan if it is not detached from the watan.

(*c*) *Limitations on interference.* The collector's interference under s. 10 is limited to cases affecting watan assigned as remuneration of an officiator (*Nilkanth*, 9 Bom. 104) and watan on which it is attempted to enforce a charge or liability created by some person deceased and does not extend to case of every attachment affecting the life interest of a watandar debtor.

(*d*) *Form.* Forms of certificates are given in Government resolutions of 21-5-75 and 13-9-90

(*e*) No *certificate* can be issued when the alienation is with the sanction of the Government (*Rachapa*, 5 Bom. 283).

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(*f*) S. 10 applies to *Deshmukh* service watan in respect of which liability to serve has been commuted under the Gordon Settlement (*Bhau*, 20 Bom. 423.)

(*g*) *Appeal.* An order cancelling a decree on the production of a certificate given by the Collector under s. 10 is one under s. 244 C. P. C. and is appealable. (*Raman Govind*, P. J. 1890.)

(*h*) *Force of a certificate.* The certificate does not prevent a civil court from making a decree though it may be that the decree may be inoperative because of the certificate. (*Sideswar*, 6 Bom. 463) A subsequent certificate to set aside a sale has no effect if before the sale certificate is issued to the effect that the lands are not Service Watan lands. (*Dinkar*, 1 Bom. L R. 825) Certificate is not binding if it is based on a misunderstanding of the term "watan." (*Ramawanda*, 22 Bom. 66) nor when it is vague and uncertain.

(*i*) *Limitation.* A court must act on the certificate though it is issued 12 years after the death of the watandar, (*Chandra Naik*, 17 Bom 362).

(*j*) *Revision of certificate.* Though discretionary power is given to the collector, it is subject to the supervision of the High Court ; but it is not interfered with unless there is a violent misuse of the authority, heinous bad faith or wanton perversion of the law (*Collector of Thana* v. *Bhasker*, 8 Bom. 264).

(*k*) A collector should not declare void alienations which a watandar is competent to make.

(*l*) *Effect of s.* 11. S. 11 affect only the alienation but not the liability of the alienor to pay the debt.

(*m*) Property to which an order under s. 10 or 11 applies can be summarily resumed by the collector or assessed as in S. 9 cl. (2); the property reverts to the Watan. (S. 11a).

In order to carry out the provisions of Ss. 10-11 Collector's are authorised to

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(*a*) Summarily evict a person wrongfully in possession of land.

(*b*) Levy rent due.

It is not imperative on the Collectors to proceed under this section (s. 12)

Exemption from process. (s. 13.)

Watan property assigned as remuneration under s. 23 and its profits, are not liable to process of a civil court. On receipt of the certificate the process placed thereon is removed and sale if any set aside. (Allowances accruing due subsequently to the death of a deshmukh watandar cannot be attached after his death as part of his estate. (*Hanumantrao*, 10 Bom. 299.) The special protection given to salary of hereditary officers is lost as soon as it is in the hands of the hereditary officer himself. (*Ganpatlal*, 10 Bom. 400).)

Combination of Watans. The Collector can combine two or more watans in the same village if they are held for the performance of similar services ; but then it is to be done only for very substantial reasons. (S. 14.)

What is the law as to commutation of watans—and what is the legal effect of the settlement.—Does the commutation affect the right to exact customary service from village servants.—What provision is made by way of defining the rights and duties of inferior watandars.

(*a*) **Commutation of Watans** (S. 15). We have seen that commutation of office is effected by previous settlements; but even for the future, the Collector is authorized by s. 15 to do it. He can do it with the consent of the holder of the watan in writing. The

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effect is to relieve the holder and his heir or successors in perpetuity of their liability to perform service upon the conditions agreed upon. The Collector can agree upon any conditions whether consistent with this Act or not. It need not be said that the settlement is binding not only on the holder but also upon the Government.

Note (i) *Holder*. It is a wide term; it includes a sole owner or the whole number of joint owners or a person dealt with as their representative or one entered in the record as such at the time of the settlement.

(ii) *Policy*. It is the policy of Government to exact service up to the full value of the watan where watandars are not willing to accept a non-service settlement.

(iii) *Widows* under Gordon Settlement have no claim to watan property or cash payment in preference to the lineal male heir unless when the sanad allows it. Name of a collateral is substituted in the records except when there is an adoptive son of the widow. Name of the widow of the last male heir can be entered as wahivatdar except when she is entitled to inherit the watan under S. 2 of Act 5 of 1886.

(iv) *Desaigiri allowance*. Moiety of an allowance continued as Aminsukdhi to a Desai Watandar after being freed from the obligation of service cannot be claimed as personal allowance to himself by the person officiating at the time of the commutation (*Maneklal* v. *Shivlal*, 8 Bom. 426.).

(v) *Effect of s. 2 of Act 5 of* 1886. It invalidates the alienations by the watandar without the sanction of Government although the services have been commuted under Act of 1874 or before that, unless the right of alienating the watan without the sanction of Government is conferred on the watandar by the Settlement. Act of 1886 is not retrospective (*Bai Hariganga*, P. J. 1887, p. 690.).

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(vi) *Jurisdiction.* There is nothing to bar the jurisdiction of civil courts in a suit brought to establish a share in the emoluments of a watan which has ceased to be a service watan (*Moheydin*, 5 Bom. 578).

(vii) *Setting aside a sanad.* Though there can be commutation of services, it is not open to the Government to set aside a sanad granted under Act 7 of 1863 without the consent of all the parties for that would be assuming the functions of a civil court. (*Bhansing*, 4 Bom. 167).

(viii) *Exception to S. 15.* This section does not affect any right of village communities to exact customary service from village servants—watandars who are relieved by Government of liability to perform the service to the State and to the village community. Commutation of the one does not affect the other. S. 16 is an illustration of the desire of the Government to avoid interference with ancient rights and customs.

Commutation of payments by watandars in alienated villages. Sometimes the property of a watan consists not of land alone but of payment in cash or kind is made by inamdars owning or occupying lands free from assessment, wholly or partially. In these cases the the Collector is invested with the power to determine the amount recoverable. The demand is not to be larger than the scale in Government villages. The object of the section is to fix definitely what these emoluments should be. The settlement is a periodical one. The Collector is to see what is fair and adequate remuneration, due regard being had to the nature and extent of the service performed. Kulkarnis' Haks in an inam village would come unders s. 17.

Note (i) The payments referred to in this section are those mentioned in s. 21, *viz customary fees* or perquisites in money or kind, whether at fixed times or otherwise. Ss. 17 and 21 provide for these customary and fluctuating payments. But the Collector

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has no power under s. 17 to impose new burdens on the land owner in cases where the payment being constant already there is nothing to determine. (*Ananta Charya*, 19 Bom. 581.)

(ii) *Ss. 17, 18, 19 compared. Ss. 18 and 19* are complementary to s. 17, which applies to payments in kind that may be made to watandars by Jagirdars, Inamdars or others owning or occupying [redacted] property free from assessment. Ss. 18-19 relate to the inferior watandars when the payments in money or kind are due to the watandar from individuals generally without any particular specification. In the case of holders of alienated lands the Collector himself is to determine the amounts of the payment due to the watandars. In the case of cultivators generally, the inquiry is to be entrusted to a punchayat and if the Punchayat fixes profits which are of fluctuating nature the Collector is empowered to determine the amount payable.

(4) *Payment by cultivators generally in case of inferior watans* (Ss. 18-21) As said above this is complementary to S. 17. The amount of watan allowance is left to be determined by the panchayat. Any person interested can apply to the collector who is to cause to be determined in writing by a punch of 5 persons

(i) The nature and extent of the right.

(ii) The extent of the duties to be performed.

(iii) The persons, families, classes liable to make payments and perform the duties.

Note (i) *Constitution of the Punch.* 2 are to be mentioned by the villagers, 2 by the watandars and the last (to be Sar Punch) by the Collector. The decision is to be in accordance with the opinion of the majority. If either party fails to nominate its members within 7 days the appointment is made by the Collector.

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(ii) *Interference of Collector.* Decision is left to Panchyat; but if they do not come to a decision within 7 days of the appointment of Sir Punch, Collector can proceed to decide; where profits fluctuate, he can fix the amount payable under S. 19 (as in cases under S. 17). The settlement is to be periodical only *i. e.* generally for ten years. (S. 21) Settlements made before the Act of 1874 are deemed as if made under this Act.

(iii) *Object of s.* 18. S. 18 was introduced in order to provide for the legal definition of the rights and duties of the village Mhars and watchmen and to lead to a specific settlement of the quarrels which tend to the damage of the Mhars who revenge themselves by poisoning the cattle of the rayats. The section can only be used when application is made by a person interested. By employing a village Punchayat to deal with these minute and intricate matters the Collectors are enabled to avoid an annoying responsibility. The authority conferred by S. 18 is not to be generally used. It is to be applied when the disputes grow so high as to lead to fighting, arson or poisoning of cattle *i. e.* in the last resorts.

(iv) *Scope.* S. 18 does not apply to any services wholly unconnected with civil administration nor to any remuneration for such services or to any rights and privileges attaching to such private services. S. 18 excludes by direct implication any right on the part of the civil courts to declare that persons are illegible to serve as hereditary officers under this Act (*Pershya*, 18 Bom. 83.) On the same principle a suit for a declaration that a plaintiff was entitled to a third share in a Mharki Watan was held not entertainable in a civil court (*Bhenia*, 25 Bom. 186).

What provision is made by the Act for the **creation** *and* **lapse** *of Watans and* **remuneration** *of officiators.*

Creation of watans. (s. 22) Watan can be created by Government where none exists. Property of the Government can be assigned to the holder, but subject to the

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sanction required. The watan is also subject to the provisions of this Act. Even a lapsed watan can be assigned to another by the Government. Watan lapses by confiscation or lawful resumption by Government or when the right of a family to hold it is not established.

Note. (i) The loss of land appertaining to a watan does not necessarily involve the loss of the *right of service.* The policy of the Government is not to revive hereditary rights once extinguished.

(ii) *Land granted with a condition of service,* attached to the grant cannot be resumed when the service is no longer required. But land granted as remuneration for service can be resumed when the service is no longer required except when there has been a grant of an hereditary office to those who are to perform the service. In that case the land can only be resumed when the need of such service altogether ceases; when the services are still required and the grantee has a right to the hereditary office he cannot be deprived of the land on the mere ground that the grantee prefers to appoint some one else to officiate. (*Bhimapaya,* 22 Bom. 422).

(*b*) **Remuneration of officiators** (S. 22). It is the duty of the Collector to fix the annual emoluments of officiators appointed under this Act; this is subject to the provisions of the Act regarding service inams, pensions, &c. Collector can assign watan property for the purpose. The assignments can be altered wheresoever decreased as occasion arises with the sanction of the Government. The increase or decrease is to be made *pro rata* among the holders. The assignments made before 1874 are deemed made under this section.

Note. (i) Where a proprietor *i.e.* person in possession is incapable of performing service he may be called upon to

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pay such rent over and above the assessment as will suffice for the wages of a substitute ; if the proprietor is unwilling, the land is resumed.

(ii) The *imposition of extra assessment* on the land to make up the scale of remuneration to the officiator and the grant to him of a stipend in cash from the treasury does not affect the right to the possession of the land.

(iii) A *female* can inherit a majmudari watan ; the Collector can assign the whole proceeds of a watan to the officiating person who is entitled to retain such proceeds as his remuneration, (*Bai Suraj*, 6 Bom. 83).

By whom are the duties of an hereditary office to be performed.—In whom is the power of determining as to who is representative watandar vested?—How is the right to service affected by relinquishment of property.—What procedure has to be followed in case of adoption to a representative watandar and of death of a Registered Watandar.

Performance of duties of hereditary office (S. 24.) The duties appertaining to any hereditary office are to be performed by the Registered watandar or by deputies or substitutes, but not by any other persons. The Collector is to determine the custom of the watan as to service and what persons are to be recognized as registered watandars. He is to register their names. In determining these he is to have regard to the previous practice in that respect ; but then appointments of heads of families contrary to the custom of the watan and made after Act LI of 1843 are not necessarily to be recognized.

Note. (i) *Decrees of Courts.* Particular attention is to be paid while acting under Clause 6 to decisions of civil courts in suits instituted before this Act applied. Such decisions are to

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be accepted as evidence within the meaning of s. 26 and as conclusive evidence so far as they are consistent with the provisions of the Act.

(ii) *Competency of Registered Watandar.* A R. W. must be a person capable of performing the duties of his office. This is apart from the cases of unfitness mentioned in s. 45 and s. 46; for minors, see s. 37. If the head of family or registered Watandar is a minor his guardian can perform the duties of the office. (For females see s. 51) Deity or idol cannot be registered as a representative watandar.

(iii) **Jurisdiction.** Under the Act of 1874 civil court has no jurisdiction to entertain a suit for damages for defendant having wrongfully continued in office (*Vasudeo*, 6 Bom. 129), or a suit brought for a declaration of right to the Patilki or eldership in a family of Patils with a view to the office of Patel (*Abaji*, 2 Bom. 362). So far as a person asks to have his own right to officiate declared a civil court has since the passing of the Act of 1874 no jurisdiction but the Act does not take away the jurisdiction to determine who are watandars *i. e.* whether a person is entitled to be on the list of watandars (*Yellapa*, P. J. 1888. *Ramrao*, P. J. 1896 p. 666. *Ramchandra*, 8 Bom. 25) as also to determine that the plaintiff is the next of kin to the deceased watandar and as such exclusively entitled to the watan with its duties and emoluments. (*Haluaji*, P. J. 1876, p. 79.) The test is, does the plaintiff want merely to be declared a watandar or goes further and seeks to be declared a Registered Watandar or at least a decision which should influence the Collector in determining who should be recognized as the Registered Watandar. In the former case Civil Court has jurisdiction ; in the latter it has not. (*Raoji* v *Ganu*, 22 Bom. 344.)

(iv) *Period of service.* Period of service is to be based on custom as to service not on value of shares of watan. The

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Collector's inquiry into the past custom of a watan is not to be restricted to the period of British rule. The custom generally is for the eldest member to officiate. (*Sanganbasapa*, P. J. 1879, p. 257.)

Registration. (S. 26). The Collector is to register a watandar as representative Watandar after due inquiry subject to following rules :—

(1) If the custom is for a member of one family to serve, the name of the head of that family is to be registered. Existing head of junior branch is to be registered if the elder branch had never any connection with the watan.

(2) If the custom is for a member of several families to perform the duties, the names of the heads of each of such families are to be registered. The order of officiating is to be fixed in cases where the practice is to serve in successive periods. (S. 28).

The words "several families" do not necessarily mean families descended from different ancestors.

Note. Effect of Ss. 29 & 30. Ss. 29-30 qualify S. 28 : in cases where there is a practice as to service in successive periods even if there is such practice, but it is not proved to have existed at the date of Act 11 of 1843, or when the practice of selection by the Collector from several families prevails the Collector is to register the name of the head of the eldest family descended from the original watandar. Again if such families are not descended from a common ancestor the Collector is to register as Registered Watandars the heads of such families and fix the practice of service in successive periods (s. 29.) Where practice of such service is introduced under the British rule as a result of the reduction of the number of officiators or the amalgamation of watans by Government, the head of each family that formerly officiated is to be registered as Registered

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Watandars. In these cases if before the register is completed the matters are decided in appeal, parties have unanimously agreed as to who is to be the Registered Watandar, that is to be followed (s. 31.)

Effect of relinquishment of property on right of service. (s. 32.) When watan property or profits have been voluntarily relinquished without abandonment of right of service, that right of service is to be dealt with as if the watandar were still in receipt of emoluments.

Adoption to representative watandars. (Ss. 33-35.) Procedure varies according as the adoption is made before or after the passing of the Act. (a) If it is before the Act, notice of the same should be given to the Collector *by* or on *behalf of* the adopted heir *within* 12 months of the Act having come into force. The name of the heir has to be entered in the register, but it can be removed if the adoption is subsequently set aside by a decree of a competent court.

Note. The sanction of Government is not necessary to an adoption by a Kulkarni or his widow or his coparcener. Government has no right to prohibit or otherwise intervene in the adoption. (*Narhar*, 1 Bom. 607.) Adoption of a person not a member of that watandar family is not necessarily invalid if the sanad does not prohibit it. (*Balaji* v. *Dalu*, 27 Bom. 75.)

(*b*) If it is after the Act of 1874 came into force, the registered watandar or his widow who adopts, or in case of their death, the adopted heir or his guardian is to report it *within* 3 *months*. The name is then entered by the Collector subject to this that it can be removed if the adoption is set aside by a competent court. If it is reported within 3 months, the Collector can not of his own motion refuse to register merely because he thinks the

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adoption is invalid. S. 39 does not bar the adoption if it is by widow of a son of a R. W. and is approved by the R. W. If the necessary notice or report is not sent the adoption is not to be recognized as valid unless the person produces a certificate of heirship or a decree of a competent court establishing his adoption. S. 35 only contemplates the intervention of a civil court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered watandar. But if the plaintiff asks declaration that his name should be entered in the watan register the civil court has no jurisdiction (*Balkrishna*, 9 Bom. 25). Adoption confers no right of inheritance according to Mahommedan Law.

Procedure in case of death of R. W. (S. 36) It is the duty of the Patel and village accountant to report the fact of death of a R. W. to the Collector. The Collector has then, if it is true, to register the name of the eldest son, or the nearest heir as R. W. in place of the deceased. A certificate of heirship or decree of a competent court is conclusive proof of facts stated therein *i. e.* heirship. The name of the widow of the last male heir can be entered as R. W. even if she does not apply. (The Collector's inquiry is to be summary. The aggrieved party can go to civil court for a certificate of heirship. Though ordinarily widow's own heirs cannot succeed to the immoveable property inherited by her from her husband, it can be allowed if there is proof of custom to that effect in bar of the claim of Government to *escheat*. A daughter does not lose her status as Watandar by reason of her marriage out of the Watan family. The widow cannot be registered as heir in case of an undivided family.)

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What is the usual period of service of Registered Watandars.—What is the procedure as to election of officiators in rotation.

Period of service of representative Watandars (S. 38.)

(i) For life

in cases falling under s. 28, 29, 30 & 31 } When the Registered Watandars are entitled to office contemporaneously.

In cases under s. 27

s. 29 (1)

(ii) For period between 5 and 10 years fixed by the Collector

in cases under s. 28, 29 (2), 30, 31 } When the Registered Watandars are entitled to office in successive period.

Note (i) This is subject to Ss. 45-46.

(ii) Previous service as deputy is no bar to subsequently officiating oneself as R. W.

(iii) In the absence of evidence showing that owners of larger shares served for longer periods in proportion of their shares the terms of years is the same for all the sharers.

(iv) The words "in each case" in s. 38 (*a*) mean in the case of each watan and not on the occasion of each appointment.

(v) In cases of death of the officiator before the expiration of his period of his office, his heir can officiate for the remainder of the period.

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Election of officiator in rotation. (s. 40)

S. 40 fixes the rotation once for all in case of rotation watans *i. e.* where duties are performed by R. Watandars in successive periods. The Collector has to issue notice to the whole body of registered R. W. to appear at election of officiator or officiators as required.

(i) If they appear :—

If not less than ⅓ of them appear and unanimously nominate a fit person or persons being watandars of the same watan; the person nominated is entitled to officiate as the R. W. whose turn it is to officiate. If he be not R. Watandar, he is deemed a deputy of the Registered Watandar.

(ii) If they do not appear as required by S. 40, or are not unanimous, the provisions of chapter VIII apply.

Note (i) An agreement between two members of a Patel family that they are to officiate in terms is not illegal as being opposed to public policy, (*Vaku* v. *Pandu*, 6 B. H. C. 248) but then the actual Patel cannot be compelled by the court to vacate office under the agreement so long as his appointment is not revoked. But in *Naran* v. *Mahadeo*, 12 Bom. 614, the court refused to entertain a suit based on an agreement under which, the plaintiff and his co-sharers in a kulkarn watan entered into an agreement for the performance of the duties of the watan by the several sharers in turn and the agreement provided that if any of the sharers prevented the nomination of a sharer to officiate in his turn he should pay Rs. 1,000 as damages to the person excluded from office.

Officiating Watandars and Deputies. (Ss. 42-55.)

By whom are the services to be performed.—Can Deputies always officiate.—When can a Collector refuse to accept

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service.—What procedure is to be followed in case of unfitness of an officiator.

Performance of service. It must be the representative watandar if he be a fit and proper person; it is to be when so required by the Collector. (S. 42.)

Deputies. It is at the discretion of the Collector to allow a representative watandar to have his duties performed by a deputy appointed by him. The Collector can proceed to appoint himself if his requisition is not complied with within 2 months from the date thereof. (S. 44.)

Number. The Collector is to determine the number of persons required for the performance of the service. It depends upon the condition of the family as well as the needs of the village.

Note. (1) *Personal Service.* As far as possible the representative Watandars have to serve in person except when Watandars are Sirdars of higher rank; deputies have to be watandars themselves, except in certain cases.

(2) *Inamdars.* They have no right of nominating deputies if they are not watandars.

(3) *Unfitness.* A person in debt and in jail is unfit to serve; the mere fact that he is in debt is not enough; a watandar who shows partizan spirit in notorious cases in the village is unfit.

(4) *Increase.* Sanction of government is not required if number is increased under S. 43.

(5) *Discretion.* Even if a person is not disqualified under S. 45 it is open to the collector to refuse to accept service from him if he is otherwise *found* unfit by the Collector.

When Collector can refuse to accept service. (S. 45.) If the person is under 18 or above 60 (except in case of special permission), or has not passed an educational test, or is disabled by lunacy, imbecility of

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mind or any permanent infirmity of the body, e. g. deafness, blindness, or is adjudged after due inquiry to be of general bad character, or declines to forsake while officiating another appointment which is incompatible with the due discharge of his office by him, or is sentenced by a criminal court to imprisonment or whipping for an offence punishable with imprisonment exceeding 6 months—provided the sentence is not reversed or disqualification is not removed by the government.

Note (i) Collector is to decide whether infirmity is such as to render the person unfit.

(ii) *Conviction*; a convicted person may be allowed to appoint a deputy though he cannot serve personally. Disqualification can be removed if the offence is trivial as under S. 323 I. P. C.

(iii) *Educational test. Police Patel*:—Ability to read the village Police Act, to write a short report on an ordinary matter, and to read simple manuscript. Even these can be dispensed with in some cases. *Kulkarni*:—Reading and writing the vernacular of the district, mathematics upto simple interest, drafting short reports, forms; examination should be passed within 3 years. Knowledge of Cattle Trespass Act is necessary.

Procedure in case of unfitness. (S. 46).

(1) Collector can call upon him to appoint a deputy.

(2) He can appoint himself if the watandar is disabled by lunacy or imbecility of mind.

Note (i) Similarly if the deputy becomes unfit.

(ii) Deputy may be removed by the Collector at the request of the watandar for sufficient reasons. Watandar may act for deputy removed (s. 46).

(iii) Representative watandar is entitled to serve on his disability ceasing (s. 47).

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(iv) Even if a collector reject a deputy appointed by a watandar, the latter can nominate another; and if he is rejected Collector can appoint himself (s. 48).

(v) Collector is to nominate himself, whether watandar is rejected because of bad character or grave misconduct under s. 58 s. 50).

(vi) *Females.* She cannot serve in person; but she may appoint a deputy if she be a representative watandar or guardian of such.

(vii) *Suspension.* When an officiator is suspended duties may temporarily be performed by a substitute appointed by the Collector. Where a father is dismissed after conviction for a crime in the conduct of official affairs, his near relations are not appointed where nomination devolves on Government.

Qualification of Deputies (s. 53). Except in certain cases under ss. 52, 53, the deputy has to be a member of the same family to which the representative watandar belongs, provided there be a member of the family fit and willing; Collector is to appoint a deputy if the watandar declines to do so. Now any person belonging to any Takshim who has an hereditary interest of any kind in the watan is a watandar.

Note (i) A daughter may appoint her husband to be her deputy under Mayukha. This government resolution is perhaps not in accordance with law.

(ii) The word "family" would include all descendants of a common ancestor if they are separately entered in the watan register as having each a right of service. Those having independent right of registration are to be deemed to be distinct families for the purpose of s. 53. By independent right is meant the right recognized by the collector under s. 28.

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Period of office (s. 54.)

(1) When a watandar appoints a deputy, it is to be for a term not less than 5 years, or for life.

(2) Where Collector appoints one, it can be for a term not exceeding 5 years.

Note. (*a*) The appointment of a deputy ceases on the death of a principal.

(*b*) The appointment of a deputy on behalf of a minor watandar ceases when the watandar attains the age of 18.

Substitute (s. 55.)

(1) It can be in case of temporary absence or illness.

(2) The principal officiator is liable to penalties for acts of the substitute.

Right to recognition as representative watandars (s. 56). S. 56 is the converse of s. 32; whereas s. 32 contemplates case of right of service retained by the watan family though the watan property has been surrendered, this section speaks of cases where the watan property may have remained with the original watan family, but the right to office has passed away from it and is vested in another family as its hereditary deputy. S. 56 applies to cases where the hereditary right of service by hereditary deputy is vested in a family distinct from the original watan family. It says that such a custom is to be recognised and the heads of the families entitled to perform the duties are to be registered and treated as representative watandars.

Penalties (Ss. 57-62.)

When can an officiator be removed from office.—What is the effect of such a removal.—When can watan be forfeited.

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How far is a watandar liable for default of a Deputy Watandar.

Punishment of officiator.

(1) He can be punished by the Collector for misconduct or neglect of duty.

(2) *Punishment* may be (*a*) Suspension from office for a period not exceeding 6 months, (*b*) fine not exceeding one-fourth of the annual emoluments.

Finality of the order. It is final except when the penalty is inflicted on an hereditary district officer.

Removal. (i) It can be only with the previous sanction of the Government.

(ii) In case of fraud, the wilful framing of incorrect records, habitual neglect of duty or grave misconduct. (s. 58)

Effect of removal from office. He cannot be re-employed in any hereditary office except with the sanction of the Government.

If such a representative watandar's period of service recurs, the deputy for him is to be appointed by the Collector. (s. 59)

Forfeiture of watan (S. 56.)

(1) It can be done by the Government only. It is discretionary with the Government and not imperative.

(2) It can be either absolute, or a short period of the whole or a part.

(3) It can be, in case of conviction of a representative watandar or his deputy or substitute appointed by him.

(4) Conviction must be by a criminal court not inferior to a Court of sessions.

(5) It must not have been reversed or quashed in appeal.

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(6) The conviction must be for an offence in the discharge of his official duties or an offence mentioned in Schedule 2 or the abetment thereof; under ss. 121-121a-122-123-124-124-125 to 136-201-212-213-216, I. P. Code.

Note (i) S. 60 was substituted by Act 5 of 1886, s. 13.

(ii) No order should be passed without investigation recorded in writing or a judgment of a court. (S. 62.)

Liability for default of deputy. (S. 61) The life interest of a representative watandar can be forfeited by the Government for default of his deputy appointed by him in cases coming under s. 58. There can be no forfeiture if the deputy is appointed by the Collector. Dismissal of hereditary Patels is regulated by the Watan Act and not Act VIII of 1867.

[*Sanction*. It is not required for the prosecution of a Police Patel, hereditary or not. Non-residence in a village if it be too small is no ground for dismissal; but failure to report the cutting of trees is.]

The life interest can be forfeited under s. 61 only when the dismissal is under s. 58. All cases against watandars in the discharge of their official duties have under a General Regulation of 1879 to be committed to Sessions for trial. The collector has in case of conviction to report the case to government. Forfeiture of interest in a watan includes forfeiture of right of service.

Inferior village hereditary offices. (Ss. 63-65.)

What are the powers given to a Collector in respect of regulating service by inferior village hereditary officers.

S. 64 applies only to village officers of lower degree than that of Patel or Kulkarni. These are Mhar, Talwar, Narkar, Dalmal Barkara. They act under the Kulkarni in the civil administration of the village.

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Powers of the Collector. Free powers are given to the Collector in respect of these, because it is thought inexpedient to have hard and fast rules regulating the service rights and duties of these inferior watandars.

The Collector can register the names of individual watandar or as held by the whole body; pass orders in regard to appointment, suspension, fine, dismissal; determine their rights, duties and responsibilities among themselves of the persons registered and their period or service by rotation or selection or election; and provide for their joint responsibility in case of misconduct of any of them; and can attach their watandars where the offence of cattle poisoning is prevalent.

Note. (i) *Talwarki lands-succession.* Legitimate male issue succeeds first, then the male issue of prostitute daughter of the family; but a woman who has herself been a prostitute is no heir.

(ii) *Mharki Watan.* The fact that a member is in possession of the lands for a long time displaces the presumption that they belong to all the sharers. (*Abraman* v. *Keshav*, P. J. 1896, P. 705.)

Register (Ss. 65-68).

What different kinds of registers have to be kept of watan lands.—What are to be their contents.—What is the effect of an entry in a register.

Kinds of Registers:—

There are 2 registers to be kept by the Collector in the form prescribed.

(i) Service lands, where liability to perform service exists.

(ii) Of non-service lands, where there is no such liability.

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Contents of the registers.

(1) *Of non-service land* (s. 66.). Area, survey number, quit rent leviable, nett revenue alienated by the Government, amount and nature of the allowance and its sources, the terms of the settlement, names of the parties thereto in the sanad.

(ii) *Of service lands.* In addition to the above, the names of occupants; the lands and allowances assigned for remuneration, names of the holders of the families and of the representative watandars, how services performed, proportional fractional share of the watan possessed by each head of the family, the number of officiators required to perform the duties.

[It can be corrected when necessary. S. 68.]

This is subdivided into that (*a*) for Patels, (*b*) Kulkarnis, (*c*) inferior village servants.

Effect of entry in the register. The collector is in no way concerned with the rights of the members of a particular branch *inter se* (*Govind* v. *Bapuji*, 17 Bom. 516). The book is for the purpose of revenue and not evidence of title, the fact of a person's name being there as occupant does not necessarily establish his title or defeat that of another (*Fatima* v. *Darya*, 10 B. H. C. 87). There is thus no cause of action against the Collector for the entry (*Ragvendra*, P. J. 1877-279.) Similarly a Collector's calling a Watan, Kadim or Jadia, in his book would not in any way affect the right of the inamdar against the watandar. (*Bhagama*, P. J. 1877 P. 327).

What is the nature of service to be rendered by watandars.—In whom is the property in watan records vested.

Nature of service (Ss. 69-70).

(1) Watandars of all denominations are bound to render service (i) customary, (ii) or as required by law.

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Proviso. That their liability to service is not commuted; in case of doubt government is to determine under s. 83. Desais are not required to give service, s. 69.

Property in watan records. These are the property of the government if prepared by a watandar or an officiator in hereditary office in pursuance of his duties or of orders of superiors. Their production can be enforced under s. 25 of Land Revenue Code. This section giving wide powers to Collector is introduced by s. 14 of Act V of 1886. But then village account papers in alienated villages are private property of the inamdar. (s. 70).

Signing records. (*s.* 71.) Head of the family is to sign the papers. But only in case of officer not inferior to that of the Patel or Kulkarni. This privilege is prized for the social position it confers on the holder.

Procedure and Appeals. (Ss. 82-85.)

What special procedure has to be followed in investigations under this Act.—Are all orders appealable? If so to whom.

Procedure. An officer conducting investigation under the Watan Act can record evidence and the proceeding is to be deemed a judicial proceeding within the meaning of Ss. 193, 224, I. P. Code. The persons summoned are bound to attend.

Order in writing. Except as allowed by cl. 2 of s. 73, orders under:—

(*a*) Part III. (directing commutation of a watan.)

(*b*) Part V. (assigning remuneration of officiators.)

(*c*) Part VI. (determining custom of the watan as to service.)

(*d*) Part VII (determining the period of service). should be passed (*a*) after investigation recorded in writing.

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(*e*) After giving proper opportunity to the parties to produce their evidence.

The order must be recorded in writing.

Note (i) *Control.* The proceedings are to be under the general control of the Commissioner and Government; no limitations are imposed on the exercise of their power (s. 74).

(ii) *Delegation.* Investigation may be by Mamlatdar or Mahalkari, but final order by the Collector only (s. 75).

Appeal.

No appeal lies

(*a*) From any order s. 64 cl. (*e*) before final order.

(*b*) Any order registering a fact under s. 67 (*b*) (*c*) (*d*) (*e*), which is a repetition of the previous register, s. 76.

(2) When appeal lies there can be

(1) Only one appeal.

(i) From order of Collector, to Commissioner within 90 days of the order.

(2) From the order of the Assistant or Deputy Collector, to Collector within 60 days thereof.

Note. (1) *Copies*; of course time taken in preparing copy of the order is excluded in computing the period. (S. 77.)

(2) *Presentation.* Petition of appeal is to be accompanied by certified copy of the order appealed against.

(3) It may be *summarily* rejected if there is no ground for interference (s. 78).

(4) *Fresh evidence.* Admission of fresh evidence in appeals is regulated by C. P. Code, S. 567.

(5) *Delay.* Delay may be excused; order excusing delay is not appealable.

(6) *New case in appeal.* The officer deciding the appeal is to proceed on the points raised in appeal. If it is not raised and he thinks the order is wrong, he can submit the case to Government for revision under s. 79.

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(7) *No second appeal.* There can be no second appeal in watan cases against an appellate order; but it would if the order on appeal is a new and substantive order passed in matter requiring investigation *e. g.* where a Collector reversing an order of his Assistant Collector refuses to allow a person to officiate as a Kulkarni.

(8) *No review.* A Collector cannot review his own decision.

(9) *Copies of G R's.* Parties are generally entitled to copies of G. R.'s affecting them.

(10) *Return of documents.* This is to be as in s. 143, C. P. Code.

Powers of Government. (s. 79.)

It can call for and examine the record of any case to see if it is legal or proper. It can reverse or modify it or even order a new inquiry. It has wider powers of revision than those possessed by the High Court under s. 622, C. P. Code. It can even go into questions of fact when Commissioners submit a case under s. 79. They give notice to opponent to make his representation to the Government.

It is effected by affixing the notice in writing to the wall of the village chowri at least seven days before the action is to be taken thereon by the person concerned.

Recoveries are to be according to law as to the recovery of land revenue.

Note. Government can frame rules for the guidance of its officers (s. 82). They are not to be inconsistent with this Act. They can determine when the doubt arises what duties appertain to any hereditary office.

Saving. The Watan Act does not affect Bombay Act VIII of 1867 or other laws defining the position of village officers.

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Delegation. The powers and duties of a Commissioner or Collector under the Watan Act can be delegated by the Government or any officer specially selected ; or in case of an alienated village to the holder thereof.

Mamlatdar or Mahalkari may be authorized to fine to not more than Rs. 2—any hereditary village officer.

How the Act of 1874 is amended by Act 5 of 1886.—What is the extent of the right of and the nature of estate held by widows and female members of a watan family in the watan.

Effect of Act 5 of 1886. The Act of 1874 is amended by Bombay Act 5 of 1886, for the provisions of which see the text (appendix). The provisions of Ss. 1 and 3 to 16 are amending provisions and are therefore considered with the appropriate sections; but s. 2 is new and it supplies a long felt omission. The amending Act prevents alienation by R. W. of the right to officiate except with the sanction of the Government and the transfer of watan property from the watandar family to another through females. The Act further facilitates agreements under s. 31, enlarges s. 53 in favour of persons of rank who are R. W., enforces the responsibility of the watandar for the good conduct of the officiators in certain cases, by vesting in Government a larger permissive power of forfeiture and the powers of the Collector under s. 70.

Position of female members. Reg. 16 of 1827 which was repealed by the Act of 1874 did not allow the watan property to leave the family in which the office is vested. The Act of 1872 did not however substitute any provision for barring inheritance by or through females. There was it is said a desire that watans should

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not go out of the family and that could be done by excluding females from the inheritance of watan property. At the same time there was a desire as inquiry indicated, that the females should not be altogether excluded, but that they should only be postponed to all males in the order of inheritance. This is adapted in s. 2 of Act 5 of 1886. Now every female member of watan family other than the widow of the last male owner and every person claiming through a female is postponed to all members of the family qualified to inherit the watan. The interest of the widow is only for her life, or if she marry till her marriage only.

Note (i) The word "through" implies some intermediate stage between the claimant and the last holder and does not apply to the case of a son claiming mother's property as such. It applies to indirect succession and not to immediate one.

(ii) The words "last male" owner mean only the last surviving representative of the watan family.

(iii) Brother's sons would be preferred in case of watan property, to daughters. (*Ramabai*, P. J. 1894 287).

(iv) S. 2 applies only to watandars defined in the Act and not all those who are in loose language called watandars *e. g.* Sutars &c. (*Yesu*, P. J. 1896 P. 18).

(v) S. 2 is not retrospective (*Rahim.* P. J. 1899, P. 371).

PART III.

Saranjams.

Define Saranjam, Mokasa, Inam.—Trace the origin of these holdings and state how these were settled.—What is the nature of the grant.—How does it devolve.—How far have civil courts jurisdiction to interfere in case of disputes as to

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saranjams.—When can these be resumed by the Government?—Is a certificate under the Pension Act necessary for a suit relating to saranjams.—What is the limitation for a suit concerning profits and possession of a saranjam.

Definitions.

(*a*) *Saranjam* is defined by *Wilson* to be an assignment of lands or their revenue by the State for the support of troops.

Mokasa; it has a meaning nearly equivalent to that of Saranjam; it means villages or lands or a share in the revenue arising from them granted on condition of military service or inam.

Inam means, grants of land held rent free and in hereditary and perpetual occupation.

Saranjams. *What are.* These holdings were formerly held on condition of performing military service. They were a species of feudal aristocracy (in Deccan) maintained for State purposes in Mahomedan and Maratha rule by temporary assignment of revenue, either for the support of the troops, for personal service, for the maintenance of official dignity or any other specific purpose. These were known as Jaghirs under Mahomedans and Saranjams under Mahrattas. The grant was grant of land revenue only, *i. e.* these were not transferable. They are *prima facie* an estate for life, though in some cases, express words used in the grant may make them hereditary. It is for the Government to determine how Saranjams are to be held and inherited. Even Civil Courts where they have Jurisdiction have to follow rules laid down by the Government; if there are no rules the court would, as held by the Bombay High Court in *Ramchandra* v. *Newatram*,

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4 Bom., be guided by law as to impartible property. The mere use of the words "for ever" do not necessarily make the grant hereditary. (*Sherlal Sultan*, 17 Bom. 43.)

Origin. It was the practice under former Governments, both Mahamedan and Maratta, to mantain a species of feudal aristrocracy for state purposes by temporary assignments of Revenue, either for the support of troops, for personal service, the maintenance of official dignity, or other specific reason. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue, and to administer the general government of the tract of land which produced it. Under the Mohamedan dynasty such holdings were known as Jaghir; under the Maratta rule as Saranjam.

Professor Wilson in his Glossary defines Saranjams as "temporary assignment of revenues from villages or lands for the support of troops or for personal service, usually for the life of the grantee; also grants made to persons appointed to civil offices of the State to enable them to maintain their dignity. They were neither transferable nor hereditary, and were held at the pleasure of the sovereign. The term *Jaghir* he defines as "a tenure common under the Mahomedan Government, in which the public revenues of a given tract were made over to a servant of the State, together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district." Mr. Steele (Hindu Castes, page 207) says: "Grants by the native Government in Jaghir were either *Fouj Saranjam*, subject to the performance of military service, or *Jat Saranjam*, personal Jaghir. The subject of these grants were the whole, or particular portions of the revenue of villages belonging to the sarkar. . . . . Usually the grants

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depended on the pleasure of the sovereign and the fidelity of the grantee . . . . . They were not, in general, hereditary; sanads seldom exist; on the first grant it was usual to give the grantee a *khat* or order addressed to the Government officers of the District." Mr. *Neil Baillie*, in his Essay on the Land Tax of India, says (page xliv) "the Jaghir is, properly speaking, an order upon the Khiraj of particular lands, which are said to be granted by way of Jaghirs."

"Under the Mahomedan dynasty such holdings were known as jaghir, under the Marattha rule as saranjam. If any original distinctive feature marked the tenure of jaghir and saranjam, it ceased to exist during the Maratha Empire for at the period of the introduction of British Government, there was no practical difference between a jaghirdar and a saranjamdar, either in the Deccan or Southern Maratha Country. The terms jaghir aud saranjam are convertible terms in these districts. The latter is now almost universally adopted. These holdings being of a political character, were not transferable, nor necessarily hereditary, but, as a rule, were held at the pleasure of the sovereign; on succession a Nazrana was levied. When of a personal nature, they were termed *Jat Saranjam*, when for the maintenance of troops *Fouj Saranjam*.

Settlement of Saranjams. Mr. Elphinstone ordered resumption of such of the military Saranjams as were not guaranteed by the treaties; even those guaranteed military holdings have now commuted their service. The personal Saranjams or those not involving performance of military duty were some of them guaranteed by treaty and kept in *status quo*. The rest were inquired into by commission.

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Each case was inquired into by the Commission in 1847 and reported on. Those granted before 1751 were considered hereditary, subject to the paramount right of the Government of determining the nature and extent of its bounty if occasion arise; those granted between 1751 and 1796 were continued to the holder at the introduction of the British rule and for one generation further with a pension of half the nett proceeds to the third generation; those granted after 1796, were continued to the holder at the introduction of the British rule, and a pension of half of the nett proceeds to the next generation. "Hereditary" includes descendants of brothers.

The history of the manner in which Deccan Saranjams were dealt with by the Government of India and the East India Company, when it succeeded to the Government of the Peishwa, is succinctly stated in Colonel Etheridge's Preface. The correspondence cited by him shows clearly enough that, when on the advice of Mr. Mountstuart Elphinstone, then Commissioner at Poona, it was determined that all Saranjams granted prior to A. D. 1751 should be considered hereditary, this concession was made, not as of right, but as an act of grace and state policy and the Government reserved to itself the power of determining, whenever occasions might arise the nature and extent of its own bounty. This reservation of the power of Government has been recognised in all the legislation on the subject since Mr. Mountstuart Elphinstone, as Governor of Bombay, framed his Code of Regulations. Section 38 of Regulation XVII of 1827 provides that "land held exempt as jaghir shall be liable to resumption and assessment under the general rules at the pleasure of Government." This is explained in clause 3 Section 1,

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Regulation VI of 1833, which says : "Jagir or other lands held on service tenure are declared to be resumable at the pleasure of Government, under the forms laid down in Clause First, Section 38, Regulation XVII, A. D. 1827, it being understood that the expression used in the said clauses *viz* : 'Under the general rules,' meant 'such rules as Government may think proper to issue from time time.'" Act XI of 1852, after providing for rules for adjudicating upon title to exemption from payment of land revenue, says: (Section 10): "These rules shall not be necessarily applicable to Jagirs, Saranjams or other tenures for service to Government, or tenures of a political nature, the title and continuance of which shall be determined, as heretofore, under such rules as Government may find it necessary to issue from time to time." So, in Bombay Act II of 1863, which was an Act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land revenue in those parts of the Bombay Presidency, which are subject to the operation of Act XI of 1852, section 1, clause 2, says: "The excepted cases, to which the authority of adjustment and guarantee vested in the Governor-in-Council by this provision shall not extend, are the cases of lands held as follows :—

1st. . . . . .

2nd. Lands granted or held as Jaghirs or Saranjams, on similar political tenure. And then, lest any question should be raised, whether the mere order of Government that land should be entered in the accounts under the heading "Political" is conclusive as to the political character of the grant; section 16 of the Act goes on to say: "Political tenure" is defined to be tenure created from or dependent upon, political considerations the exist-

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ance of which shall be determined by the Government; so in Bombay Act VII of 1863, which is a similar Act relating to districts not subject to the operation of Act XI of 1852, section 2, clause 2 provides that "lands granted to be held as saranjam, or on similar political tenure, shall be resumable or continuable in such manner, and on such terms as Government on political considerations, may from time to time see fit to determine;" and section 32 contains a definition of the term "political tenure," similar to that which we have quoted from Bombay Act II of 1863. The Regulations and Acts which we have cited show beyond all question that it is for the Government to determine how saranjams are to be held and inherited and that, if the Civil Courts had jurisdiction over claims relating to saranjams, they would be bound to determine such claims according to the rules laid down by the Government.

The *questions* which the Courts would have to consider would simply be what are the terms of the grant by which the British Government continued the saranjam and what is the rule of succession laid down by the British Government of saranjams, in general or for this saranjam in particular.

Nature of the grant. The grant in Saranjam is very rarely a grant of the soil; at any rate it is not necessarily so; it is more or less a grant of land revenue and nothing more. The burden of proof that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. In *Krishnarao Ganesh* v. *Rangrao*, Westropp, C. J., said: "Sanadi grants in inam, Saranjam, Jagir, Wazifa, Wakf, devasthan, and Savasthan are, generally speaking, more properly described as alienations of the Royal share in the produce

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of land, *i. e.* of land revenue, than grants of land, although in popular parlance, occasionally so called." This observation has frequently been quoted with approval, and the principle involved in it was the foundation of the decision in *Vaman Janardhan Joshi* v. *The Collector of Thana*, which has been followed in many subsequent decisions. In *Rowji Narayan* v. *Dadajee Bapujee*. Westropp, C. J., repeated his former observation as being undoubtedly true, though he qualified it by adding that "if words are employed in a grant, which expressly or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership may pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving under Government can be permitted to say that the ownership did not so pass."

A Saranjam or Jaghir is *prima facie* and in the absence of express words or necessary implication to the contrary, a grant of the Royal share of the revenue only, and not of the soil, for life only, resumable at the pleasure of Government, and ordinarily impartible and inalienable. The grant may be on such terms as to render the estate hereditary and alienable, and even where the term Jaghir is used, if the grant is to the grantee and his heirs and there is nothing to control the meaning of those words, the grantee would take an absolute estate. But the meaning and effect of the grant is to be gathered from the surrounding circumstances and the object with which the sanad was granted. (*Ramkrishna* v. *Nanarao*, 5 Bom. L. R. 83.)

The circumstance that grants of this kind were ordinarily of so temporary a nature, raises a presumption, even stronger than that which exists in regard to inams generally, that the grants were ordinarily grants of the land revenue, and not of the soil.

Devolution of Saranjam. A Saranjam is ordinarily impartible and descends entire to the eldest representative of the past holder. The sanads in respect of these indicate

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that the Saranjam villages are to be held and managed by one man only subject to the liability to divide the profits with the other members of the family. (*Narayan* v. *Vasudev*, 16 Bom. 254).

Partibility by usage. Saranjams are prima facie impartible, the holders being required to make a suitable provision for their younger brothers. Where, however, it appears that the members of family have treated Saranjams as partible over a long period of years and had dealt with them as such in effecting partitions of the entire family estate, which consisted both of incomes and Saranjam, the court is justified in concluding that Saranjams were either originally partible or had become so by family usage.

Saranjam property is prima facie impartible, but it may be proved by evidence that any particular Saranjam is partible (*Madhavrao* v. *Atmaram*, P. J. 1890 P. 379. Sargent C. J. and Candy J.)

As regards the *question* of the *impartibility of a Saranjam*, the rule stated by Colonel Etheridge is in accordance with the orders conveyed in a despatch from the Court of Directors, No. 27 dated 12th December, 1855. In para 20 of that despatch they say: "We agreed with you that Saranjams should not be sub-divided, but that the holders should be required to make a suitable provision for their younger brothers. A Jaghir, to which service is attached is certainly not divisible but descends to the eldest son. *Hurlall Singh* v. *Jorasem Singh*, cited with approbation by Lord Kingsdown in 6 Moore's Indian Appeals, 125, and *Rajah Nilomoney Singh* v. *Bakranath Singh*, decided by the Privy Council, 10th March, 1882. There is some evidence in the present case that the Saranjam was originally given for the maintenance of a body of horse, and was, therefore, in its inception a Jaghir held for service.

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But independently of this, and of any Government rule, the same principle would probably be applied to all Saranjams on the ground stated by Mr. Mayne (Hindu Law, Section 393), that an estate, which has been allotted by Government to a man of rank for the maintenance of his rank is indivisible, as otherwise the purpose of the grant would be frustrated.

Since a Saranjam is ordinarily impartible, it would follow that a political pension granted in substitution of a resumed Saranjam is so likewise. The Pensions Act (XXIII of 1871) prevents a Civil court from declaring such a pension to be partible, unless the collector should authorise it to do so; and the fact that the Collector authorises a suit for maintenance out of such a pension affords no ground for presuming that he authorizes a suit for the portion of the pension (*Ramchandra* v. *Sakharam*, 2 Bom. 346.)

A *Jaghir* must be taken, prima facie to be an estate only for life although it may possibly be granted in such terms as to make it hereditary (*Gulabdas* v. *The Collector of Surat*, 3 Bom. 186).

Similarly, in the Fifth Report of the Select Committee on Indian Affairs (page 83) it was said: "With regard to the Jagirs granted by Mohamedans either as marks of favour, or as rewards for public service, they generally, if not always reverted to the state on the decease of the grantee, unless continued to his heir under a new Sanad, for the alienation in perpetuity of the rights of Government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments to the religious establishments and offices of public duty, and in some rare instances of grants to holy men and celebrated scholars.

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An alienation by Saranjamdar of any portion of Saranjam estate is good only for the period of his own life. (*Narsingrao* v. *Venkajee*, P. J. 1887, p. 340. Birdwood and Parsons, J. J.)

Partition of Saranjam. The general rule that persons beneficially entitled to shares in an estate are entitled to a partition of it is excluded from application to properties such as Saranjams. (15 Bom. 248).

Joint possession. If the condition of the tenure requires sole management by one person, that condition passes with the tenure even though the tenure has passed out of the hands of the lawful holders by adverse possession; in that case a co-sharer is not entitled to be put in joint possession.

Resumption by the Government of estates held on political tenure. The agreements entered into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed separately with the several Satara Jagirdars in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule; and their Jagirs remained liable to resumption at the will of the Government (17 Bom. 431).

Jurisdiction of Civil Courts. It is for the Government of Bombay to determine how Saranjams are to be held and inherited and in cases where the civil courts have jurisdiction over claims relating to Saranjams in consequence of the non-applicability of the Pensions Act 23 of 1871 or otherwise, they would be bound to determine such claims according to the rules, general or special, laid down by the British Government. In the absence of such rules the courts would be guided by the law applicable to impartible property. (*Ramchandra*, 6 *Bom.* 598).

The question to whom a Saranjam, or Jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon

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political considerations; and it is not within the competency of any legal tribunal to review the decision. (17 Bom. 431).

In *Sheikh Sultan's* case (17 Bom. 431) Inam villages and lands, with the mokasa, included originally in one Saranjam granted under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa had ceased, a personal and military Jaghir, forming a mixed estate of Saranjam and inam. The tenure remained, under British rule, political; and no distinction could be drawn in this respect between the inam lands and the Saranjam. The whole estate passed to the person whom the Government at its discretion for political reasons recognised as the grantee, without its being competent to any court of law to question the decision of the executive authority in the matter.

Necessity of certificate under Pensions Act. Though s. 4 of the Pensions Act requires that no Civil Court is to entertain any suit relating to any pension or grant of money or land revenue conferred by the British or any former Government without a certificate of the Collector, a suit brought in relation merely to the management of Saranjam lands does not require such certificate. (*Keshavrao* v. *Ganpatrao*, 16 Bom. 596.)

Limitation. A right to possession and management of a Saranjam is immoveable property within the meaning of Art. 144 of the Limitation Act, and can be barred by 12 years' adverse possession; but a suit for account of the profits of a Saranjam cannot be so barred for the manager's possession is that of a trustee. (15 Bom. 248.)

PROB. 1—A the last head of a Saranjamdar family had 3 sons, A, B, C; A died leaving his son D. and brother B; on whom will the property devolve?

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A: Saranjam being *prima facie* impartible it will descend to D the son of the eldest son A in preferenee to B. (*Ramchandra* v. *Vencatrao*, 6 Bom. 598.)

PROB. 2—The plaintiff, an individual member of a Hindu family, sued his co-sharers for division of Saranjam and other family property. The defendant No. 1 contended that the Saranjam was impartible. Will he succeed?

A.—No, not necessarily; though *prima facie* impartible, Saranjams can be shown by evidence to be originally partible or to be so by usage. (*Madhavraw* v. *Atmaram*, 15 Bom. 519.)

PROB. 3—In 1888 plaintiff brought this suit to recover possession of certain Saranjam villages from the defendant. His beneficial right to a third share of the rents and profits of the villages were admitted by the defendant. The point in dispute was the possession and management. The defendant contended (1) that the plaintiff never was entitled to the exclusive possession and management; (2) that he (the defendant) had for years been in actual possession and management and entitled thereto by virtue of an arrangement between all the sharers in the villages; (3) that the plaintiff's claim to such possession and management was barred. Will the plaintiff succeed?

A.—In a case with these facts it was held on the evidence, that the right of management belonged to plaintiff's branch of the family, and that there was no proof of the arrangement alleged by the defendant. But it was held also that the right to such possession and management was an interest in immovable property within the meaning of article 144 of Schedule II of the Limitation Act XV of 1877, that the defendant had enjoyed that interest adversely to the plaintiff's right at all events since January, 1866 at which date the plaintiff, who had been in correspondence with Government with reference to the claim against the defendant, was referred by Government to the Civil Courts, and that the plaintiff's claim was, therefore barred by limitation. That it was not open to the plaintiff to ask to be placed in possession and

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management of the villages jointly with the defendant. If the condition of the tenure requires also management by one person, that condition must be held to pass with the tenure, even though the tenure has passed out of the hands of the lawful holders by adverse possession. The general rule, that persons beneficially entitled to shares in an estate are entitled to partition of it, is excluded from application to properties such as Saranjams. It was held further that the defendants' possession being admittedly one for management subject to the rights of the sharers to receive their respective shares in the profits of the villages, was the possession of a trustee of such profits. The plaintiff was, therefore entitled to have an account taken of the management of the villages by the defendant, and there was no limit to the period over which the accounts should extend other than the limit stated in the plaint. (*Narayan Jagannath* v. *Dikshit*, 15 Bom. 247.)

PROB. 4—On a partition between them that A was to pay every year Rs. 456-0-6 to N, it was agreed for the convenience of the brothers that Rs. 456-0-6 were to come out of the Saranjam lands. The agreement was filed as a conciliation agreement under Section 44 of the Deckhan Agriculturists Relief Act and it took effect as a decree passed by a Civil Court. The payment stipulated was made till 1899, at which time both N and A were dead but after that the payment was stopped. Thereupon B, the son of N, filed a darkhast to enforce payment from T, the son of A. It was objected that A's interest having terminated with his death, the Saranjam must be considered as a fresh grant to his son, and that the latter was not bound by the decree and liable to continue the yearly payment. Will this plea be good ?

A.—A was a trustee in respect of Rs. 456-0-6 for N—the obligation to pay which would attach to the succeeding holders of the Saranjam; and that therefore, N and his descendants would have the right to call upon A and his descendants to account for their management of the Saranjam and pay to them the Rs 456-0-6 per annum. (*Balwantrao*, 7 Bom. L. R. 659.)

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APPENDIX A.

Cases on Raitwari Tenure.

Land Revenue Code *Ss. 37-38-61.—Scope of section 37.—Survey, omission to number lands at a survey.—Effect of such omission on owner's rights.—Summary settlement.—Exclusion of land from summary settlement.—Effect of such exclusion.*

The plaintiffs who were the inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate (*a*) two plots of land which (they alleged) formed part of their inam, and (*b*) the bed of a stream which flowed through their land. It was contended for the defendant as to these two plots of land that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in 1863 and had been exempted from assessment for twenty years ; as to the bed of the stream it was contended that the stream was a public stream, and that the bed of the stream as it dried up belonged to Government and not to the plaintiffs.

It was held by the lower appellate court that section 61 of the Bombay Land Revenue Code (Bombay Act V of 1879) applied ; that Government were competent to set apart a portion of the land comprised in the sanad of the plaintiffs of a village site, and that as these lands had not been numbered at the survey of 1863, and had been exempted from assessment for more than twenty years, the plaintiffs had lost their right to cultivate them. On appeal to the High Court, held that the plaintiffs were entitled to the declaration prayed for. Held, also (1) that section 61 of the Bombay Land

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Revenue Code did not apply. That section relates back to section 38 and both refer only to lands the property of Government in unalienated portions of the villages. They do not empower the Government to confiscate any land belonging to an inamdar and to confer it on the persons living in his village.

2nd.—That the mere omission to number the plots of land could not have the effect of turning them into a part of the village site, or take away the right of the plaintiffs. Nor did the omission of Government to asses these lands deprive the plaintiffs of them, or make them the property of Government.

3rd.—That the bed of the stream was the property of the plaintiffs who owned the land upon its banks. (*Vinayakrao* v. *The Secretary of State for India in Council*, 23 Bom. 39, *Parsons and Ranade*, J. J.)

S. 52.—*Effect of.* The effect of s. 52 of the Bombay Land Revenue Code, is to give the Collector the discretion to fix the assessment, and the effect of s. 217 of the Code is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land revenue according to survey rates. (*Luxman* v. *Govind*, 5 Bom. L. R. 694. *Chandavarkar & Jacob*, J. J.)

Ss. 56, 57, 150 and 153. *Sale for arrears of assessment, confirmation of sale by Collector.—Forfeiture.—Declaration of forfeiture—Sale not invalid although no declaration of forfeiture.*

A sale of a holding for default of payment of assessment is not invalid although prior to the sale there has been no declaration of forfeiture by the Collector. The declaration is not so essentially a necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place

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is *prima facie* evidence that forfeiture had been declared. (*Gunpati* v. *Gangaram*, 21 Bom. 381, *Parsons* and *Candy*, J. J.)

Ss. 57 and 153.—*Forfeiture not followed by sale.* A declaration of forfeiture, under Section 153 of the Land Revenue Code, of the interests of the lessee holding under a permanent lease not followed by a sale, but by an order transfering possession of the holding to the lessor under Section 59, has not the effect of defeating prior incumbrances created by the lessee in favour of third persons. (*Narayan* v. *Parshotam*, 22 Bom. 389 *Farran*, C. J. *and Parsons*, J.)

Ss. 68, 83.—*Tenancy—Survey and Settlement Act, 1865.* Where Survey Settlement under Act I of 1865 is introduced, S. 83, and not S. 68 applies in determining the nature of tenancy. (*Khanderao* v. *Baslinga*, P. J., 1889, P. 19. *Sargent*, C. J. *and Nanabhai*, J.)

Ss. 71, 79, 85, 86 and 87—*Alienated land.—Registered occupant—Superior holder.*

In 1892 Vithalrao, a Deshmukhi watandar, died leaving five sons, four by one wife, of whom Kamalrao was eldest, and one son, Bhawanrao, by another wife. Kamalrao and Bhawanrao each claimed to be the eldest son of Withalrao. On the 16th June, 1893, the Collector of Satara in proceedings under Section 71 of the Land Revenue Code, ordered Kamalrao's name to be Registered in the Revenue books in place of Vithalrao's. Prior to this, however, the plaintiff and other tenants paid Bhawanrao rents for 1892-94. Kamalrao then applied for and obtained from the Collector an order, under section 86 of the Code, rendering him assistance. The subordinate Judge granted the injunction but the District Judge reversed that decision and dismissed the suit on the ground that Kamalrao was the registered occupant of the land, and that the order for assistance was valid, and that payment of rent to Bhawanrao did not discharge

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the tenants. On appeal to the High Court, *held* (reversing the decree of the district Judge and restoring that of the subordinate Judge), that the lands in question being alienated land, section 71 of the Land Revenue Code did not apply, and Kamalrao was not a registered occupant under the Code. The lands passed on Vithalrao's death to his five undivided sons, unless a custom of primogeniture existed, in the family, and payment by the plaintiff to Bhawanrao, a co-landlord, was valid discharge, (*Sambhu* v. *Kamalrao*, 22 Bom. 795, *Farran* C. J. *and Candy*, J).

Ss. 66 and 55.—*Fine leviable for appropriation of land to a non-agricultural purpose—Collector's omission to acknowledge receipt of application not a good defence to the imposition of fine.*

(*Per Parsons* and *Candy* J. J.) under sections 65 and 66 of the Bombay Land Revenue Code (Bombay Act V. of 1879), where a person appropriates land to a non-agricultural purpose he must in order to escape liability to the fine imposed by Section 66, be able to show either (*a*) that he first obtained the permission of the Collector, or (*b*) that he waited for three months from the date of the Collector's acknowledgment of his application for permission so to appropriate it. But the three months' time does not begin to run until such acknowledgment has been received so that where a person is charged with thus appropriating his land, it is no defence to plead that the Collector, though he received the application, neglected to furnish the applicant with a written acknowledgment of the reciept of the application.

Per *Ranade*, J:—Where the Collector has received the application and omitted to send an acknowledgment, the occupant need only wait for three months from the time of his sending in the application. After the expiration of this time if the occupant appropriates his land to a non-agricultural purpose the Collector cannot levy the fine provided by Section 66. (*Nayak Purshotum* v. *The Secretary of State*, 24 Bom. 240. *Parsons and Ranade* J. J. *and on reference before Candy* J.)

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S. 74.—Tenant remaining in occupation after passing a Rajinama.—Land Revenue.—Effect of the Rajinama.

The first and second defendants were subtenants of the third defendant, who had certain land which was part of the inam village of defendant. In 1883 the third defendant executed a Rajinama in the following terms which he gave to the receiver, who had been appointed by the Court to manage the village "up to the present time my father and I have been cultivating the land, but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases." Shortly after the date of this rajinama the inamdar gave the land to the plaintiff, who now sued to obtain from the defendants, who had remained in possession.

Held, that the plaintiff was entitled to the land. The rajinama operated as a relinquishment of the tenancy by defendant No. 3 under sec. 74 of Bombay Act V of 1878. Held, also, that the plaintiff was entitled to sue in rejectment although he had not been put in possession of the land. (*Bhatian Dhandu* v. *Ambo*, 1 Bom. 294. *Sargent* C. J. *and Nanabhai* J).

Ss. 81 and 153. *Default in paying assessment.—Payment of assessment by another.—Order of Collector transferring lands into name of person paying assessment.—Forfeiture.*

An order made by a Collector removing A's land from his khata and transferring them to B's khata on the ground that A had allowed the assessment thereof to fall into arrears and that B had paid the assessment, does not by itself amount to forfeiture of A's interest in the lands. (*Bhav* v. *Hard*, 20 Bom. 747, *Parsons and Candy*, J. J.)

S. 83. Where there is no satisfactory evidence of the commencenent of a tenancy by reason of its antiquity, nor any evidence of this period of its duration, nor of any usage of the locality as to the duration of such tenancies, this tenancy,

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must under s. 83 be presumed to be co-extensive with the duration of the tenure of the landlord. (*Jaikrishna* v. *Lakshmanrao*, P. J. 1890, P. 179, *Sargent*, C. J. *and Telang*, J.)

S. 83.—*Enhancement of rent—Usage of the locality.*

A grant to an Inamdar may be either of the Royal Share of Revenue, or of the soil, but ordinarily it is of the former description. The burden rests on the Inamdar to show that he is an alienee of the soil.

Where an Inamdar is an alienee only of the land revenue then his relations towards those, who hold land within the area of the Inam grant, vary according to certain well recognized conditions. If the holding was created prior to the grant of the inam then the Inamdar as such can only claim land revenue or assessment; for he has no interest in the soil, in respect of which rent would be paid. If the holding is later in its origin than the inam grant, the Inamdar even if only a grantee of Revenue, would be entitled to place tenants in possession of the Sheri lands, not by virtue of any interest in the soil, but as being entitled to make the most he can of them by way of Revenue. The difference between the two classes of holdings is obvious; in the last direct contractual relations would be established between the Inamdar and the holder. If these contractual relations are defined by an express contract of which there is evidence, then the rights of the parties must be determined by that contract. If no such contract can be proved, then the court must have recourse to the criteria prescribed by laws for determining their rights.

In cases where enhancement of rent by an Inamdar is sought to be sanctioned by usage, the test is, whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure. (*Rajya Balkrishna*, 7 Bom. L. R. 439, *Jenkins*, C. J. & *Aston* J.).

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S. 83.—Tenancy.—Antiquity.—Absence of proof.—Presumption.

To claim the benefit of the presumption created by s. 83, it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy; but the absence of that satisfactory evidence must be by reason of antiquity of the tenancy. (*Vishvanath*, 6 Bom. L. R. 645, *Jenkins*, C. J. *and Aston*, J.)

S. 83.—Tenancy not more than forty years old.—Tenancy not permanent.

Section 83 of the Land Revenue Code (Bombay Act V of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. (*Kalidas* v. *Bhaiji*, 16 Bom. 246. *Sargent*, J. *and Telang*, J.)

S. 83.—Permanent tenancy.

The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of section 83, in cases where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming. G held certain lands as a tenant under M an inamdar. The lands continued in G's family for nearly 80 years. It was found that owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence.

Held that, in the absence of any local usage to the contrary, G's tenancy must be presumed to be permanent. (*Ramchandra* v. *Anant*, 18 Bom. 433, *Candy and Fulton*, J. J.)

S. 84.—Ejectment.—Notice to quit—Necessity of proving service of proper notice to quit.

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The plaintiff sued to eject the defendant from certain land, alleging that they were yearly tenants. The defendant (*inter alia*) pleaded that they were permanent tenants. The plaintiffs at the hearing did not prove service of notice to quit as required by section 84 but contended that service of notice was admitted by the defendant in their written statement.

Held, that the defendants in their written statement, although not expressly denying the receipt of a notice, disputed its legality, and thereby threw on the plaintiff the burden of proving the service of a proper notice, no such proof was given. Consequently, even assuming that the defendants were yearly tenants, the plaintiff had not proved the termination of the tenancy or their right to recover possession. The fact that no issue was raised as to matters which the plaintiff is bound to prove does not justify the inference that the defendant intends to admit them. The duty of raising issue rests under the Civil Procedure Code with the Court. (*Ganoo* v. *Shridev Sidkeshu*, 26 Bom. 360. *Fulton and Chandawarkar*, J. J.)

Ss. 85, 86, 87.—*Inamdar—Inamdar's Assignee—Suit to recover enhanced rent—Assistance of the Collector—Inamdar not a party to the suit.*

Sections 86 and 87 of the Land Revenue Code do not make it compulsory on the inamdar, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy.

Objection as to the absence of legal demand for enhanced rent not being taken, *held*, that the suit was properly tried by the Court of first instance on the merits.

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The lower appellate Court having dismissed the suit on the ground that the inamdar was not a party to the suit, a point on which no issue was raised although it had been taken in the written statement, and which was not made a ground of appeal.

Held, that the point must be considered to have been abandoned at the trial; it was, therefore, not open to the lower Appellate Court to dismiss the suits on that ground. (*Govind* v. *Balu*, 16 Bom. 486, *Sargent*, C. J. *and Birdwood*, J.)

S. 108.—*Dhara land—Khoti land.*

An entry of a record prepared under section 108 of the Land Revenue Code, Bombay Act V of 1879, by the survey officer describing certain lands as *Khoti* is by force of section 17 of the Khoti Act, Bombay Act I of 1880, conclusive and final evidence of the liability thereby established, and shuts out the evidence of a prior decision otherwise relevant under Section 40 of the Evidence Act as proof of *re judicata* whereby a Civil Court adjudged the land to be dhara. (*Ramchandra* v. *Raghunath*, 20 Bom. 475, *Jardine and Ranade*, J. J.)

Ss. 119, 120 and 121.—*Boundary dispute.—Settlement of such disputes by Collector.—Civil Court's Jurisdiction.*

Section 121 of the Land Revenue Code must be read along with sections 119 and 120 of the Code.

It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute that his determination becomes final under s. 121 of the Code so as to oust the jurisdiction of the Civil Court. (*Laxman* v. *Antaji*, 25 Bom. 312. *Ranade and Crowe*, J. J.)

Ss. 121-119. When there was a settlement of boundaries under S. 119, the word "determinative" in S. 121 meant 'conclusive" as to the legal right of the adjoining holders.

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(*Laxman* v. *Narayen*, P. J. 1890, p. 11. *Sargent*, C. J. and *Telang*, J.)

Ss. 153, 159, 169.—*Attachment for arrears of land revenue.—Forfeiture.—Applicability of the Land Revenue Code to Talukdari villages.*

The Bombay Land Revenue Code applies to Taluka villages in the Ahmedabad District; such villages fall within the description of the "alienated holdings" as defined by the Code.

When the Talukdari village is attached under s. 159 of the Code for arrears of the land revenue, so long as the attachment subsists, an order of forfeiture under s. 153 is illegal.

Held, that the village having been attached for arrears of land revenue under s. 159 of Bombay Act V of 1879 on the 1st July, 1880, the plaintiff had twelve years' time from the date of the attachment within which he could apply for the restoration of the village, under s. 162 of the Act. The order of forfeiture of the 6th January, 1881, was therefore, null and void.

Held, also, that the plaintiff's claim for a declaration that the order of forfeiture was illegal was not barred by section 4 clause (*e*) of Act X of 1876, as the order of forfeiture could not be considered "a proceeding for the realization of land revenue." The proceeding authorized by law for the realization of land revenues *i. e.* the attachment of the village, having been taken, no other proceeding could legally be taken as against plaintiff, till the expiration of twelve years from the date of the attachment.

Held, further, that the claim for a declaration that the order of forfeiture was illegal was not time-barred, as it was governed by article 120 of Limitation Act XV of 1877. (*Samaldas* v. *Secretary of State*, 16 Bom. 455. *Birdwood and Parson*, J. J.)

Ss. 187, 56, 122, 153, 155.—*Charges incurred in connection with boundary marks.—Effect of Revenue*

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sale.—Mode of recovering such charges.—Sale for recovery of such charges.—Rights of incumbrancers.

The effect of s. 187 of the Bombay Land Revenue Code (Bombay Act V of 1879) is to make the provisions of ss. 153 and 56, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 112 in connection with boundary marks Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In former case the land is sold freed from all incumbrances created by the occupant. In the latter case the rights of incumbrances are not touched. (*Venkatesh Ramkrishna* v. *Mhal Pai bin Naru Pai*, 15 Bom. 67, *Birdwood and Candy* J. J.)

S. 216. —*Holder of an alienated village.—Application for introduction of survey by a co-sharer of an inam village.*

Under s. 216 of Land Revenue Code, it is competent to one out of several co-sharers of an alienated village to apply on behalf of and with the consent of all the other co-sharers for the introduction of a survey into the village, and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application.

The section does not require that the application should be made or signed by all the sharers. (*Gopikabai* v. *Lakshaman*, 24 Bom. 539, *Parsons and Ranade*, J. J.)

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APPENDIX B.

Case Law on Watans, Inams, &c.

Watandars' Act III of 1874, s. 5.—*Alienation of service watan land by the holder of it.—Impeachment of such alienation by the alienor.—Estoppel.*

The plaintiff who was a Vatandar Kulkarni, sued to recover from the defendant possession of certain land with mesne profits, alleging that it was his service vatan land wrongfully taken possession of by the defendant in 1880. The defendant set up a mortgage of the land alleged to have been executed to the defendant by the plaintiff's mother in the plaintiff's name during his minority. Both the Lower Courts found that the land was the plaintiff's Kulkarni vatan land, that it had been mortgaged by the plaintiff's mother to the defendant for good consideration, and that the mortgage was binding on the plaintiff; on appeal by the plaintiff to the High Court—

Held, confirming the decree of the lower Court, that the plaintiff was estopped from denying his title to mortgage to the field. The general rule being that the grantor cannot dispute with his grantee his right to alienate the land to him, the circumstances in the case did not justify a departure from the rule. The plaintiff although an hereditary public officer was not a trustee for the purposes of the Watan Act, and it could not be presumed that the grantee knew that the plaintiff's guardian had not tobained the previous sanction of Government to the mortgage; the plaintiff was therefore, estopped from saying that the grant was forbidden by the Act.

Quære, whether section 5 of the Watandar's Act III of 1874 makes an alienation to a person outside the vatandar family void as between the grantor and grantee. (*Narayan Kalgaunda*, 14 Bom. 404. *Sargent* C. J. *and Telang*, J.)

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Ss. 7, 23. *Watandar and deputy—Agreement for payment by deputy to Watandar.*

An agreement between the watandar and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of section 7 read with section 23 of the Watandars' Act. (*Appa* v. *Sadu*, 18 Bom. 750. *Sargent*, C. J. *and Candy*, J.)

S. 9.—*Wanta Pasaita land.—Collector's Revenue Registers.—Recovery of service lands.—Alienation—Limitation.*

Where land assigned as remuneration of officiating village servants is described in the Collector's Revenue Registers as "Wanta Pasaita," such a description is not inconsistent with the ordinary meaning of the word "Pasaita" or in any way suggest that Wanta Pasaita land would remain "rent free" if it passed into the ownership of any person not a watandar and not entitled to remuneration for the performance of the village service.

The summary powers given by s. 9 of the Act III of 1874, to the Collector in respect of the recovering of service land alienated to an outsider or the profit thereof, are not controlled by the date of the alienation.

The fact that after the first alienation under which the watan passed, there was another alienation does not affect a case under s. 9 of the Act.

The Law of Limitation does not govern the Collector's action under s. 9 of the Hereditary Offices Act 1874. (*Bai Shivganga etc* v. *The Secretary of State*, 7 Bom. L. R. 186. *Russell and Aston*, J. J.)

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Ss. 9, 23, 67.—*Hereditary offices.—Talvar or shetsanadi watan.—Leave alienation of talvar lands.—Regulation XVI of 1827, Ss. 19 and 20—Act XI of 1843, s. 15.*

In 1866 the defendants took a lease of lands pertaining to a talvar or shetsandi watan (the holders of which, under Regulation XVI of 1827, Ss. 19 and 20, and Act XI of 1843, s. 15 are hereditary district or village officers) from the las, owner, who, as sole occupant of the talwar office, was entitled exclusively to the emoluments attached to it. When the Watan Act (Bombay Act III of 1874) came into operation, no order as regards remuneration was made, but the plaintiff, subject to objection was appointed to officiate. The plaintiff thereupon sued to eject the defendant.

Held, that the lease to the defendant as a partial alienation was invalid under Regulation XVI of 1827, s. 20; that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under s. 9, clause 1, of Bombay Act III of 1874; and the plaintiff, as life owner, was entitled to possession. (*Purshotam Talvar* v. *Mudkangavda Shidangavda*, 7 Bom. 1890. *West and Nanabhai*, J. J.)

S. 10.—*Decree, execution.—Transfer of watan property from one not watandar.—Construction.—Collector's certificate prohibiting delivery of decreed property.*

The plaintiff Shanker and his brother, who were vatandar deshpandes, sued to redeem a certain property alleged to have been mortgaged by their undivided paternal aunt to the defendant *Babaji*. *Babaji* objected on the ground that the plaintiffs were not the heirs of the widow, who had left a daughter. The daughter was joined as co-plaintiff, and a decree passed in her favour, and that decree was confirmed by the special Judge. The plaintiffs being dissatisfied with this decision, applied to the Collector for the issue of a certificate, under

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section 10 of Bom. Act III of 1874, prohibiting the property from passing out of the family. The daughter in the meanwhile obtained possession of the property under the decree. Subsequently the certificate applied for by the plaintiffs was filed by them. The lower Court, feeling doubt as to whether the Collector could legally issue the certificate and how far it would operate, referred the case to the High Court.

Held, that the Court should not act upon the certificate to the Collector. The effect of the decree being to transfer the property from the mortgagee, who was not a watandar, to the daughter who, according to the Collector's certificate, was also not one, section 10 of Bombay Act III of 1874 had no application. The Collector, if he thought proper, should take proceedings under section 6 clause (1) of the Act. (*Shankar* v. *Babajee*, 12 Bom. 550. *Sargent*, C. J. *and Nanabhai*, J.)

S. 10.—*Certificate issued by Collector more than twelve years after death of last holder.—Court bound to act on certificate.—Limitation.—Limitation Act* (*XV of 1877*) *Art. 178.*

In execution of a decree against *Nyaling Naik* his lands were sold in February, 1875, and *Hanmantbhatt* purchased them and took possession on 10th August 1876. *Nyaling Naik* died in July, 1877, and in February, 1888, his son and heir alleging that the lands were watan applied to the Collector for a certificate which was not issued until 13th March, 1890, that is more than twelve years after the death of the last holder, *Nyaling Naik.*

Held, that *although* more than twelve years had elapsed, the court could not refuse to act on the certificate of the Collector as provided by the s. 10 of the Watandars Act. (*Chanora* v. *Bahina Bai*, 17 Bom. 362.. *Sargent*, C. J., *Birdwood*, J.)

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S. 10. *Watan—Removal of attachment—Collector's certificate.*

The applicant held a decree, dated the 28 June, 1861, against *Ismail Alli Khan*, and another for Rs. 3,954-13-7, of which he had already recovered Rs. 2,742-4-5; on the 24th December, 1866, he applied to the Court of the Subordinate Judge at Pen for attachment of the proceeds of a certain watan, belonging to the Judgment debtors, in satisfaction of the balance Rs. 1,214-9-2, due to him under his decrees; on the 7th February 1868 the court attached the proceeds by a prohibitary order on the Mamlatdar of Pen. While this attachment was pending, the Collector, on the 13th December 1878, sent a certificate to the court, and informed it that the proceeds of the watan were not liable to attachment under secs. 10-13 of the Bombay Act III 1874. The certificate referred to the watan which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the Collector as remuneration of the officiator. The Court on receiving it removed the attachment, and dismissed the application on the 11th January, 1879. The order was affirmed on an application to the High Court under the extraordinary Jurisdiction.

Held, that the Collector was authorised by the first part of section 10 of the Watandars Act, to inform the High Court by his certificate that a portion of the profits attached, had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it to remove the pending attachment.

Held, also, that the arrears due at the date of the Act, and which had not been assigned fell within the latter part of the section.

The High Court accordingly, dismissed the application with costs. (*Jagjiwan* v. *Ismail Ali Khan*, 4 Bom. 426. *Sargent*, C. J. *and Melvill*, J.)

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Ss. 10, 25 and 56.—*Representative watandar.*—*Civil Court.*—*Jurisdiction.*—*Res judicata.*

A decree of the District Court at Sholapoor, made in 1863, declared the plaintiff to be a hereditary deputy watandar of a certain deshpandye watan vested in the defendants, as hereditary watandar and as such deputy, entitled to receive a certain sum annually out of the incomes of the watan. The plaintiff received moneys from time to time under his decree. He was not, however, subsequently to the decree, registered, and treated as "a representative watandar" under Bombay Act III of 1874, s. 56. In 1875 plaintiff made a darkhast for the attachment of a certain amount belonging to the watan for arrears due to him under his decree. The money was accordingly attached. Subsequently the Collector issued a certificate to the subordinate judge, who had attached it, for the removal of the attachment under Bombay Act III of 1874, s. 10. The subordinate judge accordingly ordered it to be removed, and his order was affirmed by the Assistant Judge in appeal. The plaintiff thereupon specially appealed to the High Court.

Held, that the Lower Courts had no option, but to raise the attachment on receiving the Collector's certificate.

Held, also, that as the plaintiff having, according to law as it stood in 1863, succeeded in then establishing his right to be a hereditary deputy deshpandye, he was entitled to the benefit of s. 56 of Bombay Act III of 1874. His status as hereditary deputy watandar was a fact which neither a Revenue nor a Civil Court could properly ignore or re-open. It was *res judicata*.

Held, further, that as plaintiff was not registered and treated as representative watandar under Act III of 1874, although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such a representative watandar, or to direct that he should be so

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registered by the Collector and that any application for such registration should be made to the Collector. (*Gopal* v. *Sakharam*, 5 Bom. 259. *Westropp*, C. J.)

S. 10.—*Collector's Certificate.*

The Collector when granting a certificate under section 10 of the Bombay Hereditary Office Act (No III of 1874) exercises a judicial function, and is subject to the supervision of the High Court ; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard, or wonton perversion of the law on his part, (*The Collector of Thana* v. *Bhasker*, 8 Bom. 26. *West and Nanabhai*, J. J.)

S. 10.—*Decree, execution.—Transfer of watan property from one not watandar—Construction.—Collector's certificate prohibiting delivery of decreed property.—Practice, procedure.*

The plaintiff Shankar and his brother who were watandari deshpandes, sued to redeem a certain property alleged to have been mortgaged by their undivided paternal aunt to the defendant Babji. Babji objected on the ground that the plaintiffs were not the heirs of the widow, who had left a daughter. The daughter was joined as co-plaintiff, and decree passed in her favour, and that decree was confirmed by the special judge. The plaintiffs being dissatisfied with this decision applied on the Collector for the issue of a certificate under s. 10 of (Bombay) Act III of 1874, prohibiting the property from passing out of the family. The daughter in the meanwhile obtained possession of the property under the decree. Subsequently the certificate applied for by the plaintiffs was filed by them. The lower court, feeling doubt as to whether the collector could legally issue the certificate and how far it would operate, it referred the case to the High Court.

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Held, that the court should not act upon the certificate of the collector. The effect of the decree being to transfer the property from the mortgagee, who was not a vatandar, to the daughter, who according to the collector's certificate was also not one, section 10 of (Bombay) Act III of 1874 had no application. The collector, if he thought proper, should take proceedings under section 6 clause (1) of the Act. *Shankar* v. *Babaji*, 12. Bom. 550 (*Sargent*, C. J. & *Nanabhai*, J.)

S. 10.—Validity of certificates.—*Watan.—Share of watan divided into takshims or shares.—Decree by holder of one share against holder of other—Execution of decree—Collector's certificate forbidding alienation.*

There cannot be two separate watans in connection with one hereditary office. Thereupon when a watan is broken up into shares or takshims, those takshims do not constitute separate watan.

Where the Collector's certificate under section 10 of the Watan Act was based on a misunderstanding of the term watan.

Held, that his certificate was illegal and could not be accepted by the court. (*Ramangauda* v. *Shivapagauda*, 22 Bom. 601, *Farran*, C. J. and *Fulton*, J.)

S. 10.—*(2) and 15 (3) ill. (2)—Amending Act V of 1886, sec. (1) Deshmuki watan—Commutation of service—Gordon settlement.*

Section 10 of the Watan Act (Bom. III of 1874) applies to Deshmukhi service watan with respect to which the liability to serve has been commuted under the Gordon Settlment. (*Bhavani* v. *Ramchandra*, 20 Bom. 423. *Sargent*, C. J. and *Jardine*, J).

S. 10.—*Redemption suit—Decree for possession—Possession obtained by plaintiff under decree—Decree reversed in appeal—Collector's certificate under the Watan Act (Bom. Act III of 1874.)*

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Where an erroneous decree of the District Court is reversed by the High Court and decree of the original Court restored, the successful party has a right to be replaced in the same position as if the District Court had not made an erroneous decree. If in obtaining this right he is restored to possession of watan land such a restoration does not fall within the scope of section 10, Bom. Act III of 1894. (*Rachapa* v. *Amingouda*, 22 Bom. 55. *Farran*, C. J. and *Parsons*, J.)

S. 17—Collector's power to determine the amount of payments of a fluctuating character—Act X of 1876, Sec. 4, Cl. (c) Jurisdiction.

The payments referred to in section 17 of Bombay Act III of 1874 are those mentioned in section 4 namely "Customary fees or perquisites in money or in kind whether at fixed times or otherwise." It is the commutation of these customary and fluctuating payments that is provided for by sections 17-21. But the Collector has no power under section 17 to impose new burdens on the landowner in cases where the payment being constant already there is nothing to determine.

Plaintiff was the inamdar of a certain village. *Defendant* No. 3 was the watandar Kulkarni of the village. He enjoyed for the performance of his duties some inam lands and a cash allowance of Rs. 5 paid annually by the inamdar. In 1884 defendant No. 3 having failed to perform the service in person or by deputy, the collector appointed defendant No. 2 to act as kulkarni. Defendant No. 2 officiated from 20th November 1884 to 4th December 1886. On the application of defendant No. 2 the Collector increased his remuneration according to the scale fixed for Government village which is known as the *Wingate* scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under the scale; on the 29th September, 1890, the Collector recovered the sum of Rs. 171 from the plaintiff by attachment of his property. The plaintiff thereupon

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sued the Secretary of State for India in Council to recover this amount as being legally levied. The Defendant pleaded that the Collector, having determined the amount of defendant No. 2's remuneration under section 17 of Bombay Act III of 1874 the plaintiff had no cause of action against him, and that the suit was barred under section 4, clause 3 of Act X of 1876.

Held, that as the cash payment made by the plaintiff to the watander was certain and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under section 17 of Bombay Act III of 1874. (*Anantacharya* v. *The Secretary of State for India in Council* and others, 12 Bom. *Jardine & Ranade*, J. J.)

S. 18. *Suit for a declaration of right to a share in a watan, and to participate in the emoluments of the Watan —Jurisdiction of the Civil Court to entertain such suit.— Jurisdiction.*

Where the Plaintiffs sued to obtain a declaration that they were entitled to a third share in a Maharki Watan and to participate in the profits of the Watan.

Held, that under section 18 of Bombay Act III of 1874, the Civil Court had no Jurisdiction to make the declaration sought. (*Bhiva* v. *Vithaya*, 25 Bom. 186. *Fulton & Crowe*, J. J.)

S. 25 (*1*) *Suit for declaration of right to represent family—Jurisdiction of Civil Court.*

The plaintiff sued for a declaration that the branch of the Gando family which he represented was elder than that represented by one of the defendants. The object which he desired to obtain by a declaration in that form was to influence the collector in determining whether he should be recognized as the representative watandar in respect of the four annas share which the Gonda family possessed in a patelki watan.

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Held, that the Civil Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative watandar. This, however, equally with the duty of ascertaining the custom of the watan as to service was a duty which by sectiom 25 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) was imposed on the collector and not upon the Civil Court (*Rowji* v. *Genu*, 22 Bom. 344. *Farran*, C. J. *and Hosking*, J.)

Act of 1886: S. 2. *Vatan—Daughter of a watandar —Not a watandar of the same wattan, during her father's life time.*

The daughter of a Hindu watandar is not during the life time of her father a vatandar of the same vatan within the meaning of section 5 of Bombay Act III of 1874, as amended by Bombay Act V of 1886. (*Muktabai* v. *Antaji*, 22 Bom 715, *Candy* and *Fulton*, J. J.)

S. 2. *Retrospective effect—vatan—vatan becoming the property of widow and daughter—Heirs.*

Section 2 of Bom. Act V of 1886 is not retrospective. A vatan having devolved on the widow and daughter of a deceased Mahomadan as his heirs, and each having become owner of her share in it in so far as a vatan can be held in ownership. Held, that on the death of the widow in 1890, leaving no qualified male heirs, the daughter was entitled to succeed as her heir. (*Rahimkhan* v. *Patuliti Bintesaheb Khan*, 21 Bom. 118. *Farran* C. J. and *Parsons*, J.)

S. 2. *Succession to a watan—Widow.—Rights of succes sion of a widow other than the widow of the last holder —Adoption by such widow—Collateral male member.*

Under sec. 2 of Bombay Act V of 1886, if there is a male member of a watandar family, the succession goes to him in preference to female member, and on his death the succession

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will go to his heirs with a similar provision. Where there is a male member qualified to inherit watan property he inherits, and a widow other than the widow, of the last male member acquires no right to the watan by succession or inheritance, and consequently she cannot create, transfer, or revive any rights by adoption. A kulkarni watan was owned by two brothers A and B. B died first and A became the last male holder. A died in 1881 leaving a widow who held the watan until her death in 1892. On her death B's widow took a son in adoption. The adopted son filed a suit to establish his title to the watan, against the defendant, who was a male member of the family and had been registered by the revenue authorities as the watandar on the death of A's widow.

Held, that the plaintiff could not succeed, the defendant having a better title to the watan than the plaintiff or his adoptive mother, under section 2 of Bombay Act V of 1886. (*Krishnaji* v. *Farawa*, 24 Bom. 484. *Parsons & Ranade*, J. J.)

Adoption *of a person not a member of the watandar family.—Gordon settlement.*

A Sanad with respect to watan property which was subject to the Gordon settlement contained the following clauses.

" 2nd. No Nazranna or other demand on the part of the Government will be imposed on account of the occasion of heirs, lineal, collateral or adopted, within the limits of the watandar family, and permission to make such adoptions need not hereafter be obtained from Government.

3rd. When all the sharers of the watan agree to request it then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted will be granted by Government to the watan on the payment from that time forward in perpetuity of an annual nazrana of an anna in each rupee of the above total emoluments of the watan.

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It was contended that the adoption of a person who did not belong to the watandar family in respect to whose watan the said Sanad was granted was invalid.

Held, that the sanad did not prohibit such an adoption and that the adoption in question was valid, (*Balaji* v. *Datto*, 27 Bom. 75. *Jenkins C. J. and Batty J.*).

Alienation *by* life-tenant. A life-tenant has power to alienate his shares in watan property beyond his life interest in it. (*Amritlal* v. *Bapubhai*, P. J. 1887, P. 207, *Sargent*, C. J. and *Nanabhai*, J.)

Alienability of. ***Beyond life time by will—Effect of subsequent change in the tenure rendering it alienable.***

One Prabhudas died childless devising his entire property, including his right to receive annually a certain Desaigiri cash allowance, to the plaintiff's husband after the death of his testator's widow, Bai Amrit. The testator and the plaintiff's husband were great grandsons of one Kesordas by his son and daughter respectively. The plaintiff's husband having pre-deceased Bai Amrit, she made another will in favour of the plaintiff. Subsequently Bai Amrit died. The Plaintiff, therefore, brought a suit against the defendants, claiming the aforesaid cash allowance and arrears under these wills and as heirs of Prabhudas. The defendants, who were distant cousins of Prabhudas, being related to him beyond the thirteenth degree, *inter alia* contended that the will were invalid, as Prabhudas, when he made the will, had only a life interest in the vatan, which was a service vatan, and that they were nearer heirs to Prabhudas than the Plaintiff, who was a bhinnagotra sapinda or bandhu of Prabhudas. Both the lower Courts rejected plaintiff's claim. The plaintiffs appealed to the High Court. Held, confirming the decree of the lower Court, that plaintiff's claim should be disallowed. The alienation by will, by Prabhudas, of what was then a watan held for service, being in its

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inception invalid as against his heirs, did not become valid because of a change in the tenure of the estate after his life-interest had terminated. Bai Amrit, the widow of Prabhudas, had nothing more than a widow's estate incapable of alienation beyond her life-time, and, therefore, the wills executed by her were invalid. The case was one to be determined by the Hindu law of inheritance. The defendants, though more than thirteen degrees removed from Prabhudas, were included in the term samanodakas, and, as such, had a claim to the estate of Prabhudas superior to that of the plaintiff of her deceased husband as his bandhus. (*Bai Devkore* v. *Amritram*, 10 Bom. 372. *Birdwood* and *Jardine*, J. J.).

———. *Restriction upon alienation by a watandar. Mortgage invalid to what extent—Regulation XVI of 1827—Act III (Bombay) of 1874.*

An alienation by way of mortgage of watan property, or any part of it executed when Regulation XVI of 1827 was yet in force, had no operation beyond the life of the watandar who mortgaged. The mortgage was in its inception void against the heir of the watandar and had not become validated against the heir by reason of the repeal of the sections in Regulation XVI of 1827, relating to this subject, by Bombay Act III of 1874.

The childless widow of a watandar deceased in 1847, was the recognized watandar in possession in 1865. She mortgaged two villages of the watan to the father of the respondants. The latter two, after litigation, retained possession in 1886, by order of the Commissioner in the Revenue Department, until there should be a decree of court to the contrary. The widow according to the judgment below, had held the watan, adversely to her late husband's son, the plaintiff, who was born in 1848 of her co-widow, and he was the true heir, entitled from his birth. But the High Court gave effect to the adverse possession of the widow for the period of limitation supporting the mortgage.

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The plaintiff was the sole heir of the widow, his step-mother, who died in 1877.

The appellant contended that the watan as inherited by him was free from the mortgage encumbrance, and that he was entitled to possession.

Held, reversing the decree of the High Court, that the mortgage was void against the heir, and had no force, beyond the life of the watandar who had executed it, the decree of the subordinate judge, to that effect and for possession was maintained. (*Padapa* v. *Swamirao Shrinivas*, 24 Bom. 556.)

Combination of service.—*Alienation of watan property.*

The services attached to a watan were commuted by the Alienation Settlement Officer in 1869. In 1871 the then holder of the watan alienated it by will to a very distant heir. The validity of the alienations being questioned, *held*, that the validity of the commutation was established by S. 15, cls. 2 and 3 of Act 3 of 1874 and that the alienation was good in the absence of any family custom forbidding it. *Held* further that the case was not affected by S. 2 of Act V of 1886, which invalidates all alienations by watandar without the sanction of Government, although the services have been commuted under Act 3 of 1874, or before that Act came into force, unless the right of alienating the watan without the sanction of Government is coferred on the watandar by the terms of such settlement because the Act cannot have a retrospective effect so as to govern an alienation by will in 1871, which H was then competent to make, (*Bai Hariganga* v. *Tulsidas*, P. J. 1887 P. 69, *Sargent*, C. J. and *Nanabhai*, J.)

Commutation settlement.—*Inheritance.—Succession to a watan—Succession through females.—Bom.*

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Act 3 of 1874, s. 5, as amended by ss. 1 and 2 of Bom. Act V of 1886.—Alienation of watan.

A watan in Gujerat does not cease to be watan property as defined by s. 4 of Bom. Act III of 1874, merely because a service commutation settlement has been effected. Such a settlement does not change the nature of the property simply because service is not demanded. As far as the power of alienation is concerned, if it is granted by the settlement, it cannot be taken away by the change introduced in s. 5 of Bom. Act III of 1874 by s. 1 of Bom. Act V of 1886.

S. 2 of Act V of 1886 (which amends s. 5 of Act III of 1874) gives a preference to male members of the watan family over person claiming through females.

Held, that the section applies to watans in Gujerat, even though the services originally appertaining to such watan had ceased to be demanded.

One Niamatrai was a watandar in Gujerat. He died in 1844, leaving behind him a widow, a daughter, and a separated brother. His property consisted of certain pasaita land and a cash allowance attached to his watan. In 1868 Government effected a service settlement with the watandar by which the watan property was continued to Niamantrai's heirs free from all liability to render any services in connection with the watan. In 1889 Niamatrai's widow died, her daughter having predeceased her. Thereupon plaintiffs, who were the sons of Niamatrai's daughter, sued to establish their title as heirs to the watan property as against the defendants who were the sons of Niamatrai's separated brother.

Held, that under section 2 of Bom. Act V of 1886, plaintiff as claiming through a female, were not entitled to succeed to Niamatrai's watan property in preference to the defendants who were male members of the deceased watandar's family. (*Bai Jadav v. Narsilal*, 25 Bom. 470, *Ranade* and *Crowe*, J. J.)

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Deputy.—*Appointment of Deputy.—Power of holder of tenure.*

The holder of an hereditary office, such as a *despandye watan* cannot create an *hereditary deputy*. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. (*Ravji* v. *Mahadavrao*, 2 Bom. 237.)

Deshgat. *Watan.—Desai property appertaining to the office of* **Impartibility**—*Special tenure.*

Deshghat watan or property held as appertaining to the office of Desai is not to be assumed *prima facie* to be impartible. The burden of proving impartibility lies upon the Desai; and on his failing to prove a special tenure, or a family or district or local custom to that effect, the ordinary law of succession applies. (*Vinayak* v. *Gopal*, 5 Bom. L. R. 48.)

Deshmukh.—*Services of a hereditary officer.—Bombay Act XI of 1842, s. 2.*

By s. 2 of Act XI of 1843 hereditary officers are bound to "render the usual service of their respective offices, as far as the same may be required by the Collector or other officer under whose control they may be placed by usage or the orders of Government." *Semble* that the "usual services" of a deshmukh consist in making himself thoroughly acquainted with all circumstances affecting the land revenue in his district, and in communicating such information to the mamlatdar or mahalkari; and that the deshmukh is bound to perform or get performed so much writing business as is necessary for the above purposes, and no more. But if by reason of the subdivision of the talukas his duties in that respect are increased, he is bound either personally to perform such increased duties or to provide a karkun or karkuns to perform them for him. (*Rangoba Naik* v. *Collector of Ratnagiri*).

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Despande watan.—*Partition—Custom of primogeniture.—Presumption as to impartibility of watan.—Cessation of duties attached to a watan.*

It had been the practice in a deshpande watandar's family, extending over a century and a half without interruption or dispute of any kind whatever, to leave the performance of the services of the watan and the bulk of the property in the hands of the elder branch, and to provide the younger branches with maintenance only. *Held*, that such practice, being more probably due in its origin to a family or local usage than to a mere arrangement determinable at the will of any members of the family, ought to be recognised and acted upon as a legal and valid custom.

Discontinuance of services attached to an impartible watan does not alter the nature of the estate, and make it partible. (*Ramrao* v. *Yeshvant*, 12 Bom. 327, *Sargent*, C. J. and *Birdwood*, J.)

Females.—*Hereditary Offices Act* (*Bom. Act XI of 1843*).—*Right of* **females** *to inherit.*

Since the passing of Act XI of 1843 *a female can inherit a majumdari watan.* The Collector can assign the whole proceeds of a watan to the officiating person who is entitled to retain such proceeds as his remuneration. (*Bai Suraj* v. *Government of Bombay*, *Bapubhai Khushaldas* v. *Bai Suraj*, 8 Bom. A. C. 83).

Rights of female to inherit.—*Service tenure.*

The law in the Bombay Presidency recognizes the right of females to hold *majumdari watans*, males being appointed by them to perform the service. (*Government of Bombay* v. *Damodar Parmanandas.*)

Interest of one of co-parceners *in service tenure.—Nature of interest.—Act XI of 1843.*

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Held, that the interest enjoyed by one of a body of co-parceners in possession of land attached by way of emolument to an hereditary office cannot *be bequeathed* to one or more of the other co-parceners, as the estate held by each sharer is *only a life-interest*, subject to the right of the Collector, under Act XI of 1843, to assign a fit remuneration from the rent and profits for the maintenence of the person appointed to conduct the duties of the office. (*Bhimappa* v. *Mariappa*, 3 Bom. A. C. 128.)

Inam Commission.—*Bombay Act II of 1863, section 6, clause 21—Non-recognition of adoption—Civil Court Indian Commissioner's decision.—Act XI of 1852.*

The provision in Bombay Act II of 1863, section 6, clause 2, as to non-recognition of adoption by any Civil Court, relates only to the question of the assessability of lands when raised between Government and a cliamant of exemption. It is not open to a party to rely upon a provision of which Government only is entitled to take advantage.

In an enquiry under Act XI of 1852 the Inam Commissioner, on the 30th January 1865, decided that a certain inam village should be continued to the male descendants of the original grantee, *held* that the decision of the Inam Commissioner was only intended to regulate the duration.

Injunction.—*Watan—Kulkarni watan—Vritti—Purchaser of share in—Obstruction in performances of duties.—Specific Relief Act* (*I of 1877*), *S. 54.*

The plaintiff who had brought a share in Kulkarni watan and Joshi vritti was obstructed by the defendants in the performance of his duties.

Held that he was entitled to an injunction against the defendants. (*Moro Mahadore* v. *Duant Dhimaji*, 21 Bom. 821, *Farran*, C. J. and *Parsons*, J.)

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Jurisdiction.—*Watandar—Suit to rank as watandar, Bombay Act III of 1874.*

Under the Watandar's Act (Bombay Act III of 1874), as under the law antecedent to it, the Civil Court has jurisdiction to entertain a suit to be declared a watandar.

This jurisdiction rests on the simple denial of the plaintiff's right by the defendant irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction.

When the list of watandars is either undisputed, or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. (*Ramchandra* v. *Anant Sat*, 8 Bom. 25. *West* and *Nanabhai*, J. J.)

Jurisdiction of Civil Court.—*Representative watandar.—Bombay Hereditary Offices Act No. III of 1874.*

Since Bombay Act III of 1874 came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act.

Since that Act became law, none but representative watandars, or their deputies or substitutes, can officiate and the duty of determining what persons shall be recognized as representative watandars, is vested in the Collector, whose proceeding is a judicial proceeding. (*Chinto* v. *Laxmibai*, 2 Bom. 375. *Westropp*, C. J. and *Melvill*, J.)

Majumdari Watans.—*Power of Government to resume majumdari watans.*

Government has no power to resume majumdari watans where it dispenses with the services in respect of them, if the

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holders of such watans are ready and willing to perform such services, (*Government of Bombay* v. *Damodar Parmanandas*, 5 Bom. A. C., 202.)

Miras land.—*Proof of—Mirasdar's title.—Right of Perpetual cultivation.—Local usag e of custom.—Long possession.*

Mirasdars who had Sanads but who have lost them and those who never had them, may prove, their title by other evidence, and long possession is as strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure like other facts. may be proved by various means.

Accordingly, where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom of the country and sought to recover the lands from the defendant who claimed as purchaser, at a court sale, of the right, title and interest of the inamdar of the said lands, and the lower courts dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation, the District Court, in appeal, observing that no term of occupation as a tenant of inam land would confer a right of perpetual cultivation, and that nothing, short of a regular sanad would confer on the plaintiff his alleged right in the lands, the High Court in special appeal reversed the decrees of the Court below, and remanded the case for a new trial on the point whether the plaintiff as a mirasdar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment otherwise, previously to the Court sale to defendant, had acquired the right to hold the lands in perpetuity or payment of a fixed or other rent ascertainable by local usage, (*Babaji* v. *Narayan* 3 Bom. 340. *Westropp*, C. J. & *West*, J.)

Mortgage.—*Death of one of the mortgagors.—Arbitra-*

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tion award—Decree in terms of the award.—Deceased mortgagor's son joined as his representative.

Two brothers V and D mortgaged their watan property to B. D having died after the mortgage. B got an arbitration award for the payment for the mortgage debt. D's son N who was then a minor was joined as one of the parties to the award as the representative of his deceased father with his uncle V as his guardian. Afterwards a decree in the terms of the award was passed. At the time of the decree N had become a major. The provision for the payment of the mortgage debt was in the following terms :—" If money should not be paid according to this award the lands given in writing in mortgage. . . . from the said lands and from the settled rent, money and from other properties and also personally from the defendants, the plaintiff is to recover the money claimed annually as mentioned above by recourse to execution." After the passing of the decree in the terms of the award V also having died, B sought to execute the decree by the sale of the watan property against the heirs of V and N. As the representative of his deceased father, N contended that the watan property in his hands was not liable as the assets of his father.

Held, that the award was not passed against N in his personal capacity and the decree which was framed in the terms of the award was not a personal decree which could be executed by sale of N's interest in the watan nor was that interest assets of D's estate. (*Narayan* v. *Ramrao*, 3 Bom. L. R. 482. *Jenkins*, C. J. and *Chandavarkar*, J.)

Mortgage—Regulation XVI of 1827.—Mortgage of watan property.—Mortgagor's life-interest.—Bombay Act III of 1874.

On the 3rd December, 1856, certain watan property was morgaged by the deceased defendant to the plaintiff, who obtain-

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ed a decree on the mortgage in 1861, and attached the rents, and profits of the watan on the 9th October of the same year, on his (defendant's) death in 1869, his son succeeded to the estate and obtained a removal of the attachment of the property.

Held that the mortgagor, having only life-interest, the watan came into the hands of his sons free of the mortgage. (*Jagjiwandas* v. *Imdad Ali*, 6 Bom. 21, *Westropp*, C. J. and *Kemball*, J.)

Officiator.—*Right of officiator in proportion to shares held in watan.—Discretion of Collector.—Act XI of 1843.*

The plaintiff had two shares, and the defendant one, in a patilki watan. In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant.

Held, that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the watan might be a reason for the Collector to exercise his discretion under Act of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of two shares not agreeing as to the person to officiate. (*Bhawani Sadashiv* v. *Bhawani*, 12 Bom. 232.)

Possession.—*Liability for rent.*

The mere fact of a long prior possession or as service tenure on no rent at all, gives the holder no exemption from the payment of rent when the service is no longer required or performed. (*Chundee Nath Roy* v. *Bheem Sardar*, W. R. 1864, 37.)

Power of a watandar to create a perpetual mutalik.—*Exclusion of successors from entire management of watan.*

The creation of a perpetual mutalik with a certain share of the watan as vritti an account of mutaliki, is within

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the power of a holder of the watan for the time being, more especially when it is done for good and valuable consideration passing to the watan. But it is not competent to him to exclude his successors from the entire management of the watan. (*Bhiwaji* v. *Gervapa*, 8 Bom. 172. *Sargent*, C. J. and *Nanabhai*, J.)

Resumption.—*Inam—Service Inam—Resumption.—Inamdar.*

In the case of an Inam, service may be so connected with the tenure of land as that the power of resumption does not exist. In every case the right to resume must depend in a great measure upon the nature of the particular tenure or the terms of the particular grant.

The combination of and interest in land and an obligation as to service may fall under these heads: (1) there may be a grant of land burdened with service, (2) there may be a grant in consideration of past and future services, and (3) there may be the grant of an office the services attached to which are remunerated by an interest in land. In either of the first two classes of grant, it may be made a condition that the interest in land should cease when the services are no longer required, but in the absence of a provision to that effect lands held under those grants are not resumable at will.

Where an Inamdar asserts that he has a right to resume he has to establish that the combination is such as permits of resumption and where there is long and undisturbed possession enjoyed by the grantee, it will require very strong evidence on the Inamdar's part to make out his case. (*Lakhum Gauda* v. *Basatrabhai*, 6 Bom. L. R. 367, *Jenkins*, C. J. and *Chandavarker*, J.)

Service.—*Non-performance of service.—Payment of assessment by mortgagee.—Change of title.—Redemption.*

Plaintiff was the holder of certain inam lands, which were exempted from payment of assessment in consideration of his

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rendering certain services to Government. In 1873 the lands were mortgaged to defendant, on condition that he was to enjoy the *usufruct* in lieu of interest. In the famine of 1876, plaintiff left the village and as no service was rendered, Government appointed another person to perform the service and demanded payment of the full assessment from defendant. Defendant paid the assessment and continued in possession. But Government did not forfeit the holding, and the lands continued as before, in plaintiff's name in the watan register. In 1896 plaintiff filed a suit to redeem the lands. Held that, in the absence of a declaration of forfeiture of the holding, the steps which Government took to recover the assessment in lieu of service had not the effect of creating any change of title, and that the plaintiff was therefore entitled to redeem. (*Bhima* v. *Raghavendra*, 24 Bom. 482.)

——*Non-performance of.—Effect of adverse possession.—Limitation.—Liability to.*

Where lands are held as remuneration for services, the fact that no services have been performed does not of itself make the holding adverse. To make the holding adverse, there must be a refusal to perform service or a claim to hold the lands free of service. (*Komargowda* v. *Bhimaji Keshav*, 23 Bom. 602).

——*Services dispensed with.—Right of Zamindar to receive.*

A Zamindar has *prima facie* a right to resume lands of the Zamindar granted subject to a quit rent to tenants *upon condition of their rendering personal services* when such services are dispensed with (*Sannyasi Razu* v. *Zamindar of Salur.*)

Grant of service.—*Tenure rent free.—Assessment of rent by settlement officer.—When service no longer required.—Bom. Act VI of 1862.*

The talukdari settlement officer having assessed rent free and, on the ground that it had been granted for service, and

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that service was no longer required. *Held* that this was not a sufficient defence to an action by the holder of the land, it not being shown that by the terms of the grant (assuming that there had been a grant of an estate burdened with service) the estate was determined by the remission of the service. (*Keval Kuber* v. *Talukdari Settlement Officer*, 1 Bom. 586.)

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APPENDIX C.

Technical Terms.

Alienated land.—Land held revenue free or at a reduced rate.

Amil.—The District land revenue officer of Mogul times.

Amin.—Surveyor and land measurer.

Baghayat.—Garden land; any fields cultivated with sugar cane, vegetables, and always irrigated and measured.

Bandhara.—A dam for irrigation purposes.

Bhagdari.—(Bhag-shares) one of the names for the joint villages surviving in Gujrat.

Bighoti.—A money rate assessed on land per Bigha.

Botkhat.—Record of holding.

Chawdi.—Village place of assembly.

Devasthan.—Land granted for support of a temple.

Dhara.—Custom or standard rates of division of crop or of the revenue payment.

Dharekar.—A privileged tenant under a khot proprietor, who pays no rent beyond the dhara or established rate.

Gameti.—One of the designations of the petty chiefs of the former days.

Garkhed.—Personal or private holding of a chief.

Girania.—Land taken on mortgage by a security for land revenue to cover defaults.

Giras.—(Mouthful) provision made for the younger sons of noble families; now means a political allowance paid in cash to certain families.

Girasia.—Persons holding lands giras as opposed to those holding khalsa, now applied to descendants of certain chiefs who receive cash allowance.

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Inam.—A holding free of land revenue.

Izafat.—A tenure in Deccan.

Jagir.—(Ja = place, Gir = holder) assignment of land revenue of a territory to a chief to support troops and or dignity.

Jamabandi.—Rent roll, the annual account made out for each occupant of his holding and rent due for the year.

Jarayat.—Unirrigated cultivated land.

Judi.—Quit rent imposed by the Maharathas on free holdings, Watan lands, &c.

Kabulayats.—An acceptance form or transfer of land.

Kasbati.—A tenure non-proprietory.

Khalsa land.—Is opposed to that held by a girasia; where the overlord is state.

Khatadar.—Holder of a lot to distinguish from a holder of a part. Registered occupant

Khichadi.—A mixed village under khot landlord where part of the tenants are hereditary and part are not.

Khot.—(A revenue farmer) whether as former land owner or local land officer with a hereditary title; the tenure is called khoti; (the private or family holding of the khot is called Khoti Khasgi.)

Kist.—Instalment of land revenue.

Kulargi.—A village under a khot entirely held by Dharekar tenants at fixed rents.

Kulkarni.—Village accountant.

Lago.—Cess paid in grain to the Jamindar chief.

Mahalkari.—L. R. Officer in charge of a Mahal, subordinate to the Mamlatdar.

Mahar.—Village watchman and messenger.

Maliki.—An old Bombay tenure.

Mamul.—The government land revenue assessment, the custom due to the state.

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Miraseedar.—Permanent and hereditary tenure.

Mukh Bhagdar.—The chief or elder sharer in a shared village.

Mulgeni.—A hereditary tenant.

Muttahdar.—Holder of the seal, head-man of a section in a shared village.

Nakra.—Land entirely free of any cesses.

Narwah.—Villages in Gujrat held on co-sharer tenure *i. e.* the local land revenue is distributed equally among the co-sharers.

Peta Bhag.—Minor sub-division of a shared village.

Phalni.—A list of co-sharers and their liability in a shared village.

Pot Kharab.—Portion of a number left unassessed as uncultivated.

Pot number.—A small holding included in a number as too small to be independently numbered.

Rabi.—Spring harvest ripening at the beginning of the hot season.

Raiyat.—A tenant or occupant.

Raiyatwari.—The tenure of land generally prevailing in Bombay and Madras in which there is no middle man or landlord over the individual raiyats who are generally liable for the holding.

Salami.—Quit rent levied by the Maharathas on land formerly free; it is opposed to Nakra lands *i.e.*, quite free and talpad *i.e.*, fully assessed land.

Saranjam.—An assignment of revenue to meet expenses of troops, police, &c.

Shelotri.—Flats reclaimed from the sea.

Tok.—A strip of land for digging a canal.

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Talati.—Stipendiary village accountant where there is no watan.

Talukdari.—A tenure of certain old chiefs.

Tankha.—The Maratha fixed assessment in money as opposed to any former assessment varying with the crop.

Takavi.—An advance or loan made to agriculturists to buy seed, cattle.

Thal.—Low land between sand hills where moisture collects.

Toda giras.—The customary payment to secure lands against the terror of free booters who harassed the country; now a political pension paid to some families as by prescriptive rights.

Udhar jama.—Reduced assessment.

Wanta.—(Divided) a tenure, vestige of a former chiefship.

Warkas.—Jungle land destined to supply grass &c. to burn on rice fields.

Watan.—Land holdings and privileges collectively of hereditary district and village officers.

Watandar.—These were revenue free holders of any office to which watan is attached.

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APPENDIX D.

Questions on L. R. Code and Watans set at the Departmental Examinations.

Land Revenue Code Act V of 1878, (April, 1895.)

Q. 1.—What are the general rules regulating the digging of stones etc. in villages.

Q. 2—What are the orders regulating the cutting down of trees in service holdings. ? *A.*—Ss. 40-44.

Q.—3 To what penalties is a Khatedar liable who builds on his holding ? A built in his number in 1889; at the revision introduced in 1893 the Assessment was not changed. The Mamlatdar reported in 1894 that A had appropriated his land to building purposes ; could the Collector enhance the assessment ?

A—(*a*) S. 66. (*b*) No. Ss. 1-2.

Q. 4.—To what limit of area and value can land be granted rent free for Schools and Dharamshalas ? What special condition is annexed to the grant of land for Dharamshala near Railway Station ? *A.*—Rules framed by Government.

Q. 5—In what cases can the assessment fixed on land be altered during the currency of 30 years' guarantee ? *A.*—S. 48.

Q. 6—Distinguish between the ways in which a Collector should dispose of the occupancy of the different description of land ?

Q. 7—*A* asks that his 2 annas share in the land entered in the name of B in the revenue records may be entered in his own name ; what preliminaries must be gone through before this can be done ? *A.*—S. 109.

Q. 8.—In boundary mark inspection you find that (*a*) a stone has been removed 2 feet from its proper place, (*b*) there is a redundant stone. What would you do ? Quote the section or rule applicable. *A.*—S. 122.

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Q. 9—What do you understand by the ¼ fine; must the whole of it be collected; how can the Collector of Ratnagiri recover it from one residing in Bombay. *A.*—S. 148.

October, 1895.

Q. 10—Define revenue officer; what are the acts forbidden to revenue officers. *A.*—Ss. 3, 31.

Q. 11—Giving the rules as to the disposal of building sites? *A.*—Rules under S. 65.

Q. 12—What is done (1) when a new village site is established in lieu of a former one, (2) when an entirely new village site is established?

Q. 13—Define a recognised share of a survey number. State the exceptions subject to which the provisions of the Land Revenue Code which are applicable to entire survey number are applicable to recognised shares of a S. W. also? *A.*—S. 3 (7).

Q. 14—If an occupant dies intestate and without known heirs describe how his occupancy is disposed of? *A.*—S. 72.

Q. 15.—Mamlatdar has ordered assistance to be given to an Inamdar to recover his rents from his tenants. How can the Mamlatdar's order be given effect to? *A.*—As in ch. 11, ss. 141—143.

Q. 16.—What Government dues can be recovered in the same manner as sums due on account of Land Revenue? *A.*—S. 187.

Q. 17.—What is the difference between a formal inquiry and a summary one. In what cases does the Land Revenue Code require formal inquiries to be held?

A.—In a summary one, no evidence is recorded in detail as in the case of formal ones (S. 193.)

April 1896.

Q. 18.—What description of land is liable to the payment of land revenue to Government? Can land revenue be levied under any circumstances from land which has been exempted by special

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contract from payment of revenue? How would the following plots be treated in assessing the revenue :—

(*a*) A newly formed alluvial plot measuring 4 gunthas and attached to a 2 acre holding.

(*b*) A similar piece of land measuring 1¼ acres attached to a 14 acre holding. *A.*—(*a*) Ss.45 to 48. (*b*) S. 46.

Q. 19.—State concisely to what extent an occupant may make permanent changes in his holding by erecting buildings and providing irrigation works. Describe the procedure to be followed by an occupant who wishes to erect a cotton ginning press on his land? *A.*—S. 15.

Q. 20.—What necessary preliminary steps must be taken before selling by auction (*a*) moveable, (*b*) immoveable property seized in default of payment of revenue. *A.*—S. 165 166 167.

Q. 20A.—Are the following sales legal?

(*a*) The sale of an occupancy right four weeks after notice has been published. *A.*—No. S. 167.

(*b*) The sale of an occupancy right on new year's day. *A.*—S. 167.

(*c*) The sale of a basket of mangoes within a week of seizure for default. *A.*—S. 167.

Q. 20B.—Describe how provision is made for the maintenance of all boundary marks in a state of good repairs.

What steps should an Assistant Collector take on visiting a village to satisfy himself that due attention is being paid to the preservation of boundary marks therein? Does Government in any case bear the cost of repairing boundary marks? *A.*—Ss. 122, 123.

Q. 21.—An Inamdar holding land in British territory accepts a survey settlement and levies rent according to the scale; after 30 years he raises all rents 25 P. C. The cultivators refuse to pay. Explain what steps the Inamdar may take to enforce payment; could he attach the holdings of his tenants?

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State to what extent a Mamlatdar would be justified in interfering in the dispute. *A.*—S. 86.

Q. 22.—What are the rules regarding cultivation of Pot kharah.

Q. 23.—What are the usual dates for the payment of instalments of Land Revenue. *A.*—25th January and 25th March.

Q. 24.—By whom and for what purposes may earth be removed from beds of river free of charge. Is any permission necessary ?

Q. 25—What trees are usually reserved at a Survey settlement ? *A.*—S. 40.

Q 26—By what processes may an arrear of land revenue be recovered ? *A.*—S. 150.

October, 1896.

Q. 27—Give the rules for the inspection of boundary marks by the Mamlatdar and the officers subordinate to him ? *A.*—S. 122.

Q. 28—What are the special rules relating to the assessment of,

(1) Building sites. (2) Melon beds. (3) Waste land such as salt marsh or other land in a practicably unculturable condition.

Q. 29—Mention the various ways in which an arrear of land revenue can be recovered. Up to what time is it competent to a defaulter to arrest compulsory proceedings by payment of the arrears due ? *A.*—S. 150.

Q. 30—The head of a Hindu joint family dies, and his heirs desire a partition of his land ; what procedure is followed. How far may a survey number be divided in your district (Mention name of district). *A.*—Ss. 1114-115.

Q. 31—Revenue free grants may be made by the Collector. Under what circumstances and with whose sanction ?

Q. 32.—Describe briefly the whole process of the introduction of the original Survey Settlement into a village beginning

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with the arrival or the scene of the Survey Officer in immediate charge ? *A.*—Ss. 98-100.

Q. 33.—What lands are chargeable with the land revenue. Can the assessment fixed on a piece of land ever be either increased or diminished, and if so under what circumstances ?

A.—(*a*) Ss. 45-48. (*b*) Ss. 102-104.

Q. 34.—What provisions does the law of the Presidency contain for the checking of the spread of prickly pear.

April, 1897.

Q. 35.—Who are responsible to Government for the payment of Land Revenue. Define defaulter. How may arrears of land revenue be recovered ?

A.—(*a*) S. 136. (*b*) S. 150.

Q. 36.—Describe the procedure for the holding of sales of movable and immoveable property ordered to be sold under the provision of Chapter X of the Land Revenue Code. How are the expenses of sales calculated ? *A.*—Ss. 165, 180.

Q. 37.—A villager encroaches on land in the village site. What steps should be taken by the village authority. To what amount of fine is the encroacher liable ? *A.*—S. 134.

Q. 38—How can a superior holder recover his rent or land revenue from an inferior holder ? *A.*—S. 86.

Q. 39—How may an arrear of land revenue be recovered ? *A.*—S. 150.

Q. 40—What is Pot Kharab, what are the rules about cultivating it ?

Q. 41—How are boundary marks to be kept in order ? *A.*—Ss. 122-123.

April 1897.

Q. 42—Explain the terms (1) revenue officer, (2) Land, (3) Building Site, (4) Tenant. A.—S. 3.

Q. 43—May an occupant of Government land relinquish his occupancy in favour of a friend ? Is an occupant bound

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to relinquish his entire holding if he wish to part with a Survey number? Explain the procedure for reliquishing an occupancy in the case where there are several occupants? *A.*—S. 74.

Q. 44—A money lender advances a sum of money to an occupant of Government land who subsequently makes a default in paying the assessment? Is there any way in which the money lender can protect the occupancy from forfeiture for default, and if so, how would the occupant be affected by his action? A.—S. 80.

Q. 45—What is the nature and what are the objects of a revenue Survey? Describe the powers and duties of a Survey officer engaged in a Survey.

Q. 46—State how the general public, a potter and a Local fund overseer may obtain earth, stone, and murram from.—

(1) The bed of a nala. (2) Unassessed waste land. (3) A village tank.

Q. 47—What enquiries under the Land Revenue Code may or must be formal and must be summary? Give three instances of inquiries which are not required by the Code to be either formal or summary, stating in each case who is the lowest officer with powers of revision. A.—S. 223. 197

Q. 48—A the registere d occupant of a Survey numbe in which a house has been built, with the Collector's permission bequeaths his house to his cousin B. On A's death B sends a petition to the Assistant Collector praying that the land on which the house stands may be entered in his name as a separate Survey number and the residue of the original Survey Number entered in the name of C as only son. Can this be done under any particular circumstances and if so, what preliminaries are necessary. A.—Ss. 71, 65, 116.

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April, 1898.

Q. 49—Give an outline of the constitution and powers of revenue officers as laid down in chapter II of the L. R. Code.

Q. 50—Into what three classes is all land divided for the purpose of the levy of the Land Revenue?

What are the maximum charges which may be made on behalf of Government for transferring land under various circumstances from one class to another? A.—Ss. 45—48.

Q. 51—How does the Land Revenue Code provide under different circumstances for the assessment of land unauthorisedly occupied. To what general relaxation are these provisions usually subjected in practice and under what general authority?

Apart from assessment what maximum fines may be levied for such unauthorised occupation for various purposes? A.—65.

Q. 52—What are the various precautionary and other measures for the compulsory realisation of land revenue, which of these measures may be taken by Government on behalf of a landlord against his tenant. Should such assistance be granted to the extent of any rent which the landlord may claim? A.—(*a*) Ss. 141—143. (*b*) not necessarily.

Q. 53—What Government dues can you name as recoverable under any law as arrears of land revenue? A.—S. 181.

Q. 54—What are the provisions of the Land Revenue Code regarding the concession of Government rights to trees to the occupants of unalienated land? and when it is alleged that a particular piece of land is not liable to assessment on whom does the burden of proof lie? A.—S. 40.

Q. 55—What are the general rights of a survey occupant? A.—Ss. 65—69.

Q. 56—Describe the procedure for the introduction of a revenue survey? A.—Ss. 95—110.

Q. 57—What precautionary measures may be taken for the Security of the Land Revenue? A.—Ss. 141—144.

Q. 58—By whom and for what purposes may earth be

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removed from the bed of a village tank free of charge ; is any permission necessary ?

Q. 59—What officers inspect boundary marks and on what dates ? How are the results recorded, how are boundary marks kept up, who is to prevent cultivators negligently or wilfully destroying boundary marks. Is the strip of land between the earthen boundary mounds a boundary mark ? A.—S. 122—123.

April 1899.

Q. 60—Define (1) A Survey number, (2) registered occupant, (3) revenue officer. Is a hereditary Patel a revenue officer ; give reasons for your answers ? A.—(*a*) S. 33. (*b*) no.

Q. 61—To what uses may the occupant of land appropriated for purposes of agriculture put his land ? what procedure must be followed if he wishes to apply the land to any other purpose ? A.—S. 66.

Q. 62.—What special powers can be conferred by commission on holders of alienated lands ? What provisions are there in L. R. C. to prevent abuse of this power ? A.—S. 88, 89—91.

Q. 63—How are arrears of land revenue recovered ; what other dues can be recovered in the same way as land revenue ? *A.*—(*a*) Ss. 150. (*b*) S. 181.

Q. 64—How is the introduction of Survey Settlement to be made ? A revised Survey Settlement is introduced in September 1898 ; where will the new rates first be levied ?

Up to what limit is an enhancement of assessment permitted ? A.—(*a*) S. 95. (*b*) S. 104 (*c*) S. 107.

Q. 65—What is a registered occupant ; how can a man become a registered occupant ? A.—Ss. 3 ; 17.

Q 66—What is the difference between a formal and a summary inquiry ? Is either of them a judicial proceeding ? A.—(*a*) S. 193, (*b*) Yes. S. 196.

Q. 67—How are lands in the beds of rivers used for growng malons assessed ?

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Q. 68—Into how many classes is land held by Railways divided? What is the difference between the various classes.

October, 1899.

Q. 69—What are the rules governing the relinquishment of occupancies (*a*) absolutely, (*b*) in favour of a particular person. A.—S. 74.

Q. 70—For what purpose and with what restrictions is it lawful for a revenue officer to enter upon land or into buildings?

Q 71—A rayat petitions for the separate demarcation of a portion of a survey number. Under what conditions can this be done. Is there any exception to the rule which prescribes a minimun area for such sub-divisions? A.—Ss. 115-116.

Q. 72—What are the rules regarding complete boundary mark inspection; by whom is it carried out and when? A.—Ss. 122-123.

Q. 73—To whom do trees growing in land held by the Mahars (or Dheds) of a village for service belong? A.—S. 40.

Q. 74—A registered occupant loses $\frac{3}{4}$ of an acre by diluvion. To what compensation is he entitled and when should it be settled. If $\frac{1}{4}$ of an acre is afterwards restored to him by alluvion, has he to pay anything for it? A.—S. 46.

Q. 75—To what extent may a registered occupant remove earth, stone and coal from his survey number? A.—S. 69.

Q. 76—The holder of a commission under S. 83 of L. R. C. reassesses his lands. If the inferior holders refuse to pay, what are the respective remedies of the superior and inferior holders? A.—Ss. 89-92.

April 1900.

Q. 77—What acts are prohibited to Revenue Officers under the L. R. Code? A.—S. 31.

Q. 78—In what particular circumstances has a rayat an interest in the road side trees planted by Government along a road passing by the survey number; what is the extent of his interest? A.—S. 41.

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Q. 79—Define "Superior holder."

Is a superior holder liable to any penalty for failing to give a receipt to an inferior holder. State the provisions of L. R. C. on the point. A.—(*a*) S. 3, (13.) (*b*) S. 59.

Q. 80.—What rights have the owners of survey numbers on the banks of rivers to freshly formed alluvial land adjacent thereto? A.—S. 65. 64

Q. 81.—What special powers can be granted by Government to holders of alienated land.

Is the commission holder liable to any penalty under the L. R. C. for enforcing excess payment? A.—(*a*) S. 88. (*b*) Yes. Ss. 91, 92, 93.

Q. 82.—What are the precautions which can be taken to secure the payment of land revenue? What penalty is provided in L. R. C. for disobedience of such directions? A.—Ss. 141, 143.

Q. 83.—The inhabitants of a village cultivate the bed of a tank from a well; are they liable to any penalty for doing so? A.—S. 45.

Q. 84—A cultivator applies to be allowed to buy a disused well situated in the village pasturage. The Collector sells the well by auction and gives it to the highest bidder. Is this action correct?

Q. 85—The holding of a Watandar Patel is forfeited for arrears of land revenue, what steps may be taken by the Collector regarding it? A—S. 57.

Q. 86—Can a Collector in a district of the Bombay Presidency take steps to recover arrears of land revenue due on account of land in (*a*) Madras Presidency, (*b*) Baroda State? A—Yes. Ss. 147, 149.

April, 1901.

Q. 87—What is penalty for the unauthorized occupation of land for non-agricultural purposes? Has the holder of an Inam village any remedy against cases of such unauthorized occupation occuring in his inam village? A—S. 63.

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Q. 88—What is the procedure prescribed in the Revenue Code for the conduct of sales of immoveable property? A—Ss. 165, 179.

Q. 89—What action may be taken if land included in an assessed survey number is appropriated to non-agricultural purposes? Is there any restriction on the cultivation of land included in a survey number? A—Ss. 66, 67.

Q. 90—In the case of what sales under L. R. Code may the procedure prescribed in Chapter XI of the Code be departed from?

September, 1901.

Q. 91—Define "registered occupant"; under what circumstances may the Collector substitute the name of one registered occupant for that of another? A.—(*a*) Ss. 3, 7. (*b*) Ss. 70, 71.

Q. 92—Define "building site"? What steps has the occupant of agricultural land to take before he may (*a*) build a house, (*b*) dig a well in his holding. If a tenant unauthorizedly appropriates land to a non-agricultural purpose, who is liable and to what penalties? A—(*a*) Ss. 3; 80. (*b*) S. 65. (*c*) S. 66.

Q. 93—Under what conditions may the "Pot kharab" be brought under cultivation.

Q. 94—What are the rules with regard to alluvial land?

Q. 95—What special powers may be granted to the holders of alinated lands? What conditions are necessary to the grant of these powers? A.—S. 88.

Q. 96—Mention any acts which are punishable under L. R. C. as well as under I. P. C.

Q. 97—What are the provisions of the L. R. C. regarding concessions of the Government rights over trees to the occupants of unalienated land? A.—Ss. 40-44.

Q. 98—What officers inspect boundary marks and how are the results recorded?

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March, 1902.

Q. 99—Define (1) boundary mark, (2) superior holder, (3) registered occupant. A.—Ss. 3, 9, 13, 17.

Q. 100—What powers may be conferred by commission on holders of alienated lands? A.—S. 188.

Q. 101—In what ways may arrears of revenue be recovered? A.—S. 150.

Q. 102—If a registered occupant dies, what is to be done with his occupancy? A.—S. 71.

Q. 103—How is a survey settlement introduced? When is an enhanced assessment leviable? A.—S. 103.

Q. 104—Can a revenue peon serving on the establishment of a Mamaladar, be dismissed in the case of gross misconduct, without formal inquiry and proceeding, and if so by whom? A.—S. 32.

Q. 105—In what case may the Collector change the name of a registered occupant of land in his records?

Q. 106—A cultivator whose land adjoins a public road is found to have ploughed up and cultivated a strip forming a portion of the road, describe the question of his liability?

A.—S. 65.

Q. 107—A holds a field measuring 23½ acres and adjoining a river bank. He is found to have cultivated a recently formed alluvial strip measuring 1-3-4 acres; what assessment if any should be levied on the latter; give reasons? A.—S. 46.

Q. 108—A Survey Settlement is introduced into an alienated village in which the Inamdar levies dry crop assessment on certain lands at Rs. 2-2 per acre. The survey rate on this land is Rs. 1-6 per acre. Discuss the question as to the new rates which the Inamdar will be entitled to levy.

Q. 109—The Mamalaldar reports that A a cultivator who owes Rs. 300 to a money lender has agreed to hand over to latter

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his whole crop valued at Rs. 220 as soon as the crop is ready for reaping. A deed to this effect has been drawn up and registered in consideration of the money lender's refraining from legal proceedings against the debtor ; what steps if any could an Assistant Collector take to guard against loss of land revenue due by A.

Q. 110--A and B are two cultivators whose holdings adjoin. A asserts that B has removed the boundary stones between their lands so as to encroach upon A's holding. B. denies the allegation what can be done in the matter ?

Q. 111—Can a land holder permit the quarrying of stone from the Pot Kharab in his field; if so, subject to what conditions?

September 1902.

Q. 112—State the various processes of the recovery of land revenue ; are these processes bound to follow one another in a fixed order or may any of them be applied at discretion ? A.—S. 150.

Q. 113—What do you understand by the term " Superior holder " and " Inferior holder"; give a few instances of every day occurrence. In the event of an inferior holder withholding rent what is the superior holder's ordinary remedy ? A.—(*a*) Ss. 3 (13). (*b*) S. 86.

Q. 114.—State the provisions of Land Revenne Code with regard to newly formed alluvial land bordering on a survey number ? A.—S. 46 ; 64.

Q. 115—In what cases is the cultivation of land included as unarable in a survey number prohibited ?

March 1903.

Q. 116—State the law as to the ownership of road side trees and the assessment of the land on which they grow.

A.—Ss. 40, 41.

Q. 117—What should a Mamlatdar do if he finds that two Khatedars whose fields lie on opposite sides of a river are in

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dispute as to the possession of an alluvial land lying between their holdings ? A.—S. 64.

Q. 118—Give very briefly the rules regarding the grant of certified copies of documents.

Q. 119—Land is required for (1) a temple outside the village (2) for a Dharamsala near by a station ; on what conditions may it be granted revenue free ?

Q. 120—By whom, on what condition and with whose permission may earth be removed free of charge (*a*) from village limits, (*b*) from village tanks, (*c*) from river beds.

Q. 121.—Has the holder of Service Inam land a right to the timber growing on that land? A.—Ss. 40, 41.

Q. 122—Explain how building fines are assessed ?

A.—(Rules under S. 65.)

Q. 123—What different kinds of boundary marks are there ? A.—S. 122.

September 1903.

Q. 124—Define " occupant", " registered occupant." If the registered occupant sells his land, does he still remain the registered occupant. A.—(*a*) S. 3, 17. (*b*) yes.

Q. 125—What rights has the collector over alluvial land and how can he dispose of such land ? A.—S. 64.

Q. 126.—What different measures can the collector take for recovering arrears of revenue ? A.—S. 156.

Q. 127.—On what principles are melon beds in the beds of rivers given out for cultivation. Is any revenue charged on them ?

Q. 128—The Assessment Collector is informed that a potter is spoiling a Survey number of which he is the registered occupant by removing earth to make bricks ; can the Assessment Collector interfere ; if so, how ?

Q. 129—A the registered occupant of a S No. has sold it to B but A's name remains on Revenue Records. B applies

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for permission to build a house in the survey number, agreeing to pay all the fees required. If A objects to the building being allowed, will his objection have any effect and if so how will it be best for B to proceed.

March, 1904.

Q. 131—Under what circumstances may revenue free grants of land be made and what steps are usually taken to guard against the abuse of such grants?

Q 131—On what terms and by whom may the occupancy of salt land, not required for salt manufacture be granted?

Q. 132—What should the Collector do on receiving a report that the Inamdar of a village has received from an inferior holder directly a sum of revenue amounting to Rs. 84 (*a*) What should the Collector do, if a village is held in Inam by three persons, but is entered in the accounts in the name of only one of them, and a dispute arises between the registered holder and the other two sharers as to the right of recovering the revenue? A—Ss. 86, 87.

September, 1904.

Q. 133—The Collector issues a notice to a defaulting cultivator prohibiting him from cutting the crops in a certain survey number without permission. What further steps can the Collector take if his order is disobeyed by the defaulter and abetted by another man. A.—S. 142.

Q. 134—When may the Collector assume the management of a Inam village and what is the Inamdar's position and remedy when this happens? A.—S. 144.

Q. 135—If a registered occupant dies what is the procedure to be followed when (1) he leaves heirs, (2) there are no known heirs.

A.—Ss. 71, 72.

Q. 136—In what ways can a superior holder recover his dues? A.—Ss. 86, 87.

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Questions on Watan Act of 1874.

April, 1895.

Q. 1—Under what circumstances may the Collector refuse the service of a watandar or his Deputy?

A.—S. 45, if he has reason to believe after enquiry that he is unfit, &c.

Q. 2—For what offences can a watan be forfeited? (A.—S. 60).

October, 1895.

Q. 3—What particulars must a service register contain? When may Government direct the forfeiture of a watan? (A.—Ss. 66-67. In case of conviction for an offence stated in S. 60).

Q. 4—It is brought to the notice of the Collector that in execution of a decree of the District Judge certain Kulkarni watan land assigned for the remuneration of the officiator has passed without the sanction of Government into the possession of a member of the watan family who is not at present officiating. What action can the Collector take in the matter?

(A.—Ss. 11-12. Collector can proceed under Ss. 11 and 12).

April, 1896.

Q. 5—What is the procedure for settling a register of service Inam; what is a representative watandar. How may an officiating watandar be dealt with for misconduct in discharge of his official duties? A.—(*a*) S. 65. (*b*) S. 24. (*c*) Ss. 57, 59.

Q. 6—Under what conditions can an adopted son inherit a watan? A.—Ss. 33, 34.

October, 1896.

Q. 7—On the expiry of a Patel's term of service he fails to deliver to his successor certain revenue and Police papers on the pretext that they have been mislaid. How can the papers be obtained from him?

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A.—S. 70 as amended by Act 5 of 1886; Collector can order production under Ss. 25, 26, L. R. Code.

Q. 8—Notice is served for the appointment of a Kulkarni and A the representative watandar, whose turn it is to serve produces a deputy B. The following objections are raised.

(*a*) C another representative watandar says it is not A's turn to serve.

(*b*) D another representative watandar says notice was only served upon him D the day before that fixed for hearing?

(*c*) E claims that B is a bad character and demands to be allowed to serve for A. How would you deal with the objection? A.—Ss. 40-41.

April, 1896.

Q. 9—A village watchman is remunerated solely by holding land free of assessment. This land falls into the hands of a Sahukar; can the Sahukar be turned out and if so, how? A.—Ss. 8, 9, 10.

October, 1897.

Q. 10—Define (1) a hereditary office, (2) Watandar.

May a female perform in person the duties of an hereditary office; what restrictions are imposed by law on the entry in the Watan register of the name of an adopted son of a representative Watandar? (A.—(*a*) S. 3. (*b*) S. 51. (*c*) Ss. 33-34.)

Q. 11—May the representative Watandar herself adopt an heir and claim the entry of his name in the register? A—S. 34.

Q. 12—In what cases is the Assistant Collector authorized to appoint the deputy of a Watandar Patel? (A.—Ss. 52; when officiator is suspended.)

Q. 13.—*A*, *B*, *C* & *D* are representative Watandar Kulkarnis entitled to serve in rotation; on the occurrence of the C's turn to serve proceedings are held from time to time and finally E an outsider is appointed by the Assistant Collector. Draw up proceedings by which this result has been reached. (A.—Ss. 40, 41.)

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October, 1898.

Q. 14—For what offences can watan be forfeited. (A.—S. 60.)

Q. 15—A representative Patel's Inam land has passed out of his possession ; to what extent and under what circumstances is that land liable for his remuneration ; can he under any circumstances altogether recover his land ? A.—Ss. 8-10.

April 1899.

Q. 16—What is a representative watandar; can he appoint a deputy; if so, how long ? For what period can a Collector appoint a Deputy ? A.—(*a*) S. 24. (*b*) S. 54.

October 1899.

Q. 17—A representative watandar wishes to appoint a deputy for ten years. Can he do so ; can a deputy appointed by a representative Watandar be removed. (A.—S. 54.)

April 1900.

Q. 18—For what reasons may the Collector refuse to accept the services of a representative watandar or his deputy ? When does the Collector appoint a deputy on behalf of the representative Watandar ? (A.—(*a*) S. 45 as amended by Act 5 of 1886. (*b*) S. 46.)

Q. 19—An order of dismissal is recorded against a Watandar Patel for neglect of duty ; but he is allowed to resign in place of being dismissed ; can he be subsequently appointed as deputy for another Watandar ? A—No. S. 59.

March, 1901.

Q. 20—When can a Watan be forfeited ? Who is empowered by Act III of 1874 to declare it forfeited ? (A.—S. 60. Government can.)

Q. 21—When mahars and villagers dispute as to the right and duties of the former, how may the matter be auothoritatively settled ? (A.—Ss. 18-19 ; by a Panchayat.)

September 1901.

Q. 22—Certain Inam land granted for the remuneration of the Patel is found to have been sold to an outsider ;

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what steps may the Collector take with regard to this land? (A.—Ss. 8-10.)

Q. 23—When may an outsider be appointed to serve as a deputy for a representative watandar? (A.—S. 53.)

Q. 24—In what cases is a Collector bound to refuse to accept the service of a representative watandar? (A.—S. 46.)

September 1903.

Q. 25—Under what circumstances can a watan be confiscated? A patel was tried for waging war against the King. The Sessions Judge in acquitting him says that "there is no doubt that the accused committed the offence although technically the evidence is insufficient"; can A's watan be confiscated? (A.—(*a*) S. 60, (*b*) No. because there is no connection.)

October 1904.

Q. 26—What should the Collector do when the Mahars complain that they do not receive proper remuneration from villagers? (A.—S. 18.)

(*b*) When the Mamlaldar reports that land held for service by new watandar Patels has been alienated without sanction! (A.—S. 9.)

September 1904,

Q. 27—Under what contingencies may service Inam land, which has been alienated by a watandar be restored to the watan family? (A.—Ss. 8-10.)

Q. 28—A Patel has been convicted of theft in a criminal Court and you want to recommend his dismissal; draw up formal proceedings. (A.—S. 60.)

October 1905.

Q. 29—An officiating Patel applies for the restoration of his Inam land mortgaged to a non-watandar by the Patel's father, since dead; what can be done? (A.—Ss. 8-9.)

Q. 30—The village Mahars complain that the villagers do not pay their Haks or customary dues; what can the Assistant Collector do? A.—Ss. 18-19.

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SUPPLEMENT.

BOMBAY ACT No. III OF 1874.

(Passed by the Governor of Bombay in Council.)

(Received the assent of the Governor of Bombay on the 6th November 1874, and of the Governor-General on the 27th January 1875, and published by the Governor of Bombay on the 5th February 1875.)

An Act to amend the Law relating to Hereditary Offices. (Watans.)

Whereas it is expedient to declare and amend the law relating to Hereditary Offices; it is hereby enacted as follows:—

PART I.—PRELIMINARY.

I. *Title and application.*—This Act may be called the "Bombay Hereditary Offices Act"

It extends to the Regulation Districts and to all villages therein, whether alienated or otherwise, so far as its provisions shall not conflict with the terms, on which any such alienated village may have been secured to the holder thereof.

Nothing in this Act shall affect the powers of Government to deal with any Watan or parts of Watans, or with the profits thereof respectively under Act No. XI of 1852, or Bombay Acts Nos. II and VII of 1863, or any other law at present in-force with respect thereto.

II. *Enactments repealed.*—The enactments mentioned in the Schedule hereto annexed shall be repealed to the extent specified in the third column of the said Schedule.

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III. *Application of parts VI, VII, VIII and IX.*—Parts VI, VII, VIII and IX of this Act shall not apply to hereditary offices of lower degree than Patel or Kulkarni, nor to Watans appertaining to such offices.

IV. *Interpretation.*—In this Act, unless there be something repugnant in the subject or context—

"Watan property" means the moveable or immoveable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an Hereditary Office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.

It includes cash payments, in addition to the original Vatan property made voluntarily by Government and subject periodically to modification or withdrawal.

"Hereditary Office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration. The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The Watan property if any and the hereditary office and the rights and privileges attached to them together constitute the Watan.

"Watandar" means a person having an hereditary interest in a Watan. It includes a person holding Watan property acquired by him before the introduction of the British Government into the locality of the Watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. It includes a person adopted by an owner of a Watan or part of a Watan, subject to the conditions specified in Sections 33 to 35 of this Act.

"Family" includes each of the branches of the family descended from an original Watandar: Provided that no sub-

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division shall be recognized except as hereinafter provided in Section 26.

" Head of a family " includes the chief representative of each branch of a family.

" Representative Watandar" means a Watandar registered by the Collector under Section 25 of this Act as having a right to perform the duties of an hereditary office.

"Officiator" means the person actually performing the duties of an hereditary office for the time being, whether he be a representative Vatandar or a deputy or a substitute appointed under any of the provisions of this Act.

" Guardian" means a relation or other person to whom the care, nurture, or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nurture, or custody of any child, or in case of dispute the holder of a certificate of guardianship from a competent court.

V. *Prohibition of alienation of Watan and Watan rights* :—

(1) Without the sanction of Government it shall not be competent :

(*a*) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(*b*) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15, or before that section came into force, clause (*a*) of this section shall apply to such watan, unless the right of alienating the watan without the sanction of Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

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VI. *Clause* 1.—*Collector may institute legal proceedings for the protection of a Watan.*—In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any Watan, or the estate property, funds, or affairs thereof, the Collector shall certify such case in writing under his hand to the Revenue Commissioner, together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case, and thereupon the said Revenue Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute in the name of the Collector such legal proceedings as may appear requisite or proper for the protection of the Watan, its estates, property, funds, or affairs, by suit or petition in any Civil Court having jurisdiction in the matter. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the Watan.

Clause 2.—*Collector may proceed under Sections 8 to 11, or 13.*—The Collector may, if he thinks fit, proceed as provided in Sections 8, 9, 10, 11 or 13 of this Act in lieu of instituting or prosecuting legal proceedings under this Section.

VII. *Watan assigned as remuneration not alienable without sanction.*—Watan property assigned under Section 23 of this Act as remuneration of an officiator, and the profits of Watan property so assigned, shall not be alienated or assigned to any person whatever without the sanction of Government.

VIII. *Watan property passed into possession of person other than officiator liable to contribution for remuneration of officiator.*—Whenever any Watan, or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have before the date of this Act coming into force passed by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of any person other than the officiator for the time being, or has or have before (2)

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such date passed otherwise than by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of a Watandar other than such officiator; or when any Watan, or part of profits thereof, not being assigned as remuneration of an officiator has, after the date of this Act coming into force, passed by virtue of, or in execution of, a decree or order of any British Court or otherwise, into the ownership or beneficial possession of a Watandar other than such officiator; such Watan, or any part thereof, or any of the profits thereof, shall be liable under the orders of the Collector to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had been passed or no such transfer had taken place.

IX. *Clause.* 1.—*Collector may declare alienation of Watan property to be under certain circumstances null and void.*—Whenever any Watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of a decree or order of any British Court, and without the consent of the Collector and transfer of ownership in the Revenue records, into the ownership or beneficial possession of any person not a Watandar of the same Watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such Watan, or any part thereof, or any of the profits thereof, shall from the date of such order belong to the Watandar previously entitled thereto, and may recover and pay to such Watandar any profits thereof accordingly.

Clause 2.—Collector may in the case of land recover full rent.—If such part of Watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amonnt so recovered shall be considered as the profits.

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The decision of the Collector as to what is the full rent shall be final.

X. *Civil Court shall, on receipt of Collector's certificate, remove attachment on Watan property assigned as remuneration of officiator.*—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any watan, or any part thereof, or any of the profits thereof, recorded as such in the Revenue records or registered under this Act, and assigned under Section 23 of this Act, as remuneration of an officiator, has or have, after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such watan, or any part thereof, or any of the profits thereof, not so assigned has or have so passed or may pass (added by S. 3 of Act 5 of 1886) into the ownership or beneficial possession of any person not a Watandar of the same watan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a watan or part of a watan, or that such property constitutes the profits or part of the profits of a watan, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said watan, or any part thereof, or any of the profits thereof and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said watan, or any part thereof or any of the profits thereof.

XI *Collector may declare null and void alienation of watan property made after passing of this Act.*—When any alienation of the nature described in Section 10 of this Act shall take place otherwise than by virtue of, or in execution of a decree or order of any British Court, the Collector shall, after

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recording his reasons in writing, declare such alienation to be null and void, and shall either summarily resume possession of such property, or assess it at the rate prescribed in Section 9, Clause 2 of this Act, as he may think fit, and it shall thenceforward revert to the Watan.

XIa. *Resumption of property to which an order made under section 10 or 11 applies.*—The Collector shall either summarily resume possession of all property to which an order of a court passed on receipt of his certificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause 2 of section 9, as he may think fit and the said property shall thenceforward revert to the watan.

XII. *Powers of Collector to carry out provisions of Sections 8, 9 and 11.*—It shall be lawful for the Collector whenever it may be necessary, in carrying out the provisions of Sections 8, 9 and 11 of this Act,

(*a*) To summarily evict any person wrongfully in possession of any land, or

(*b*) To levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

XIII. *Watan assigned as remuneration not liable to process of Court.*—Watan property assigned as remuneration of an officiator under Section 23 of this Act and the profits of such Watan property are not liable to process of any Civil Court.

On receipt of a certificate under the hand and seal of a Collector to the effect that certain property designated therein is Watan property so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of or affecting, such property or the profits thereof.

XIV. *Clause 1.—Combination of hereditary offices.*—It shall be lawful for a Collector for reasons to be stated in writing, to combine two or more Watans held for the

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performance of similar services in the same village or parts of the same village.

Clause 2.—Any such combination made before the date of this Act coming into force shall have the same force as if made under this Act.

PART III.—COMMUTATION OR VATANS.

XV. *Clause* 1.—*Commutation of service.*—The Collector may, with the consent of the holder of a Watan, given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Clause 2.—*Settlements made before passing of this Act to have same force as those made under this Act.*—Any settlement made for this purpose before the date of this Act, coming into force by any Collector or other officer acting on behalf of Government with the holder of any Watan shall have the same force as if made under this Act.

Clause 3.—*Settlement on whom to be binding.*—Every settlement made or confirmed under this Section shall be binding upon both Government and the holder of the Watan and his heirs and successors.

Clause 4.—*Who is a "holder."*—The word "holder" for the purposes of this Section includes any sole owner or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement.

XVI. *Rights of individuals to exact customary service from village servants not affected by this Act.*—Nothing in the last preceding Section shall be held to affect any rights of individuals or village communities to exact such service as may be customary from village servants whose Watans were originally granted or are now held for the performance of

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such service, but who have been relieved by Government of liability to perform such service to the State.

XVII. *Assessment of amount of payments in alienated villages.*—When all or any of the property of a Watan consists of payments of whatever description, whether in money or kind, made by Jaghirdars, Inamdars, Mevasi Chiefs, or others owning or occupying immoveable property wholly or partially free from assessment, the Collector may from time to time determine the amount of such payments recoverable; provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages.

XVIII. *Appointment of Panchait to define rights and duties of certain classes of Watandars.*—When all or any of the property of a village watan of lower degree than that of Patel or Kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the nature and extent of such right and of the duties to be performed, and the persons, families, or classes liable to make payment and to perform the duties, to be defined in writing by a Panchait of five persons, (whereof two shall be appointed by the villagers, two by the Watandars, and one who shall be Sir Panch, by the Collector. The decision shall be in accordance with the opinion of the majority of the Panchait, provided that in case the villagers or the Watandars fail to nominate members within seven days, the Collector shall appoint such members as may be required to constitute a Panchait of five.

Provided also that, in case the Panchait do not come to a decision within seven days from the appointment of the Sir Panch, the Collector may himself pass a decision.

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The decision of the Panchait or of the Collector, as above provided, shall be final and binding on all persons or classes whose rights, duties or liabilities have been submitted to such decision.

XIX. *Mode of fixing amount payable when profits of a Vatan fluctuate.*—Whenever, on failure of the Panchàit to come to a decision, the Collector, acting under the last preceding Section, passes a decision, and it appears that the profits of the Vatan or part thereof are of fluctuating amount, or are payable in kind, it shall be lawful for the Collector to determine the amount payable and to decide whether the payment shall be made in kind or money.

XX. *Validity of settlements made prior to passing of Act.*—Any settlement of the nature described in Section 17, 18 or 19 of this Act, made before the date of this Act coming into force, by a Collector or other officer duly authorised by Government, shall have the same force as if made under this Act.

XXI. *Settlements for such period as Government may direct.*—Settlements of the nature described in Sections 17, 18 and 19 of this Act, made after this Act comes into force, shall be made for such periods as the Governor in Council may from time to time direct.

PART IV—CREATION AND LAPSE OF WATANS.

XXII. *Creation of new Watan.*—When no watan exists, it shall be lawful for Government to create one, and in so doing to assign, subject to such sanction as may be required by any law, or order of the Governor-General of India in Council, for the time being in force, such property of Government as to Government may seem fit.

Such watan shall be subject to all the provisions of this Act, and the watandars shall exercise the powers and perform the duties conferred and imposed by this Act or any other law for the time being in force.

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When a Vatan, or part of a Vatan, has lapsed or has been confiscated or otherwise lawfully resumed by Government, or when the right of any particular family to hold a Vatan does not exist or is not established, it shall be lawful for Government, subject to the sanction mentioned in the first clause of this Section, to assign such Vatan, or part of a Vatan, to such person or persons as to Government may seem fit.

Part V.—Remuneration of Officiators.

XXIII. *Collector to fix emoluments of officiators.*—Subject to the provisions of this Act and of any other law for the time being in force regarding Service Inams, Cash allowances and Pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

Collector may assign Watan property for the purpose.—It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof, towards the emoluments of officiators. The existing assignments shall, until altered by competent authority, be taken to have been made under this Section. With the sanction of Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan.

Part VI—Representative Watandars.

XXIV. *Duties of office to be performed by representative Watandars.*—The duties appertaining to any hereditary office shall be performed by the representative watandars or by deputies or substitutes as hereinafter provided, and by no other persons.

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XXV. *Determination and Registration of representative Watandars.*—It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the Watan as to service and what persons shall be recognized as representative Watandars for the purpose of this Act, and to register their names.

XXVI. *Previous practice to be considered in determining who are representative Watandars.*—In determining what heads of families shall be recognized as representative Watandars and what is the custom of the Watan as to service, the Collector shall inquire into and take into consideration the practice heretofore observed from the earliest period for which there are records or other evidences available: provided that he shall not be bound to recognize appointments or sub-divisions which have been made subsequently to the introduction of Act No. XI of 1843, and which he considers to be contrary to the custom of the Watan.

XXVII. *Registration of head of family as sole representative Watandar.*—If it shall appear to the Collector that the custom has been for a member of one family only to serve, the Collector shall register the name of the head of such family only as the representative Watandar and no other person.

XXVIII. *Registration of heads of families as representative Watandars.*—If it shall appear to the Collector that the custom has been for a member of each of several families to perform the duties either contemporaneously or for successive periods, the Collector shall register the name of the head of each of such families as representative Watandars and no other persons and where the practice of service and successive periods is proved to exist, he shall decide the order in which the representative Watandars shall officiate.

XXIX. *Clause* 1.—*Registration of head of eldest family as sole representative Watandar.*—Where the practice of service in successive periods appears to have existed, but is not proved

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to the satisfaction of the Collector to have existed at the date of the introduction of Act No. XI of 1843, or when the practice of selection by the Collector from several families prevails he shall determine who is the head of the eldest family descended from the original Watandar and shall register his name as sole representative Watandar.

Clause 2.—Registration of heads of separate families as representative Watandars.—In cases where such several families are not descended from a common ancestor, the Collector shall register as repreesntative watandars the heads of such families, and establish the practice of service in successive periods.

XXX. *Registration as representaiive Watandar of head of each family in amalgamated Watan.*—When the practice of service in successive periods has been introduced under the British rule, in consequence of the reduction in the number of officiators (this word is substituted for the word sharer by S. 6 of the Amended Act of 1886) or the amalgamation of Watans by Government, the head of each family that formerly officiated shall be separately entered as a representative Watandar.

XXXI. *Procedure if heads of families agree as to who are representative Watandars.*—But if in any case described in Section 29 of this Act the heads of families at any time before the completion of the Register prescribed by this Act agree unanimously in writing, or have in writing agreed during the inquiry made in the preparation of the existing Registers, as to who are the representative Watandars, and as to the order of service, then the Register prescribed in this Act shall be prepared in accordance with such agreement.

XXXII. *Right of service to remain after relinquishment of Watan property.*—When watan property or profits have been voluntarily relinquished without abandonment of right of service, such right of service shall be dealt with as if the Watandars were still in receipt of such emoluments.

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XXXIII. *Notice of adoption if Heir has been adopted prior to the passing of this Act.*—In any case in which, before the coming of this Act into force, any registered representative Watandar or his widow shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted Heir to the Collector, who shall register the name of such Heir accordingly. But if such adoption shall be shown to have been or shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

XXXIV. *Notice of adoption when Heir is adopted after the passing of this Act.*—In any case in which, after the coming of the Act into force, any registered representative Watandar or his widow shall adopt an Heir, report of such adoption shall within three months be made to the Collector by such Watandar or by his widow, or in case of their death then by such adopted Heir, or by the Guardian of the latter, and the Collector shall register the name of such Heir accordingly. But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

XXXV. *Procedure if notice of adoption is not duly given.*—In any case in which notice or (added by S. 7 of the Amended Act of 1886), report of such adoption shall not be made as herein directed, the Collector shall not recognize the same without the production of a certificate of Heirship, or of a final decree of a competent Court establishing the validity of such adoption.

XXXVI. *Death of representative Watandar has to be reported; name of Heir to be registered.*—When any representative Watandar dies it shall be the duty of the patel and village accountant to report the fact to the Collector; and the Collector shall, if satisfied of the truth of the report, register the name of the eldest son or other person appearing to be

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nearest heir of such Watandar as representative Watandar in place of the Watandar so deceased. A certificate of heirship or a decree of a competent Court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree.

XXXVII. *Guardian of minor Watandar to perform duties of minor.*—When any head of a family or representative Watandar is under the age of eighteen years his guardian may, subject to the provisions of Section 51 of this Act, exercise all powers and perform all duties conferred and imposed by this Act.

Part VII.—Periods of Service.

XXXVIII. *Representative watandars to serve for life or for fixed periods of five or ten years.*—"Subject to the provisions of sections 45 and 46 representative watandars shall be entitled to office for the following periods, respectively (namely):—

(*a*) in cases falling under section 28 or section 29, clause 2, or section 30 or section 31, in which the representative watandars are entitled to office contemporaneously, and in cases falling under section 27 or section 29, clause 1.	for life;
(*b*) in cases falling under section 28 or section 29, clause 2, or section 30 or section 31, in which the representative watandars are entitled to office in successive periods,	for such periods as the Collector shall in each case determine, the same being not less than five nor more than ten years.

Period for which representative Watandar is to perform duties.—The periods during which a representative Watandar shall perform the duties shall be as follows:—

In Watans registered under Section 27, the first clause of Section 29, and Section 31 of this Act, the period of service shall be for life.

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In Watans registered under Section 28, the second clause of Section 29 and Section 30 of this Act, the period of service, if contemporaneous, shall be for life, and if in successive periods the period shall be fixed at the discretion of the Collector, but for a Patel shall be not less than ten years and for a Kulkarni not less than five years. (Substituted by S. 8 of Amended Act of 1886.)

XXXIX. *Procedue on death of officitator.*—In the event of the officiating Watandar dying before the expiration of his fixed period of service, his heir shall, subject to the provisions of Part VIII of this Act, be entitled to officiate for the remainder of that period.

XL. *Clause* 1.—*Election of officiator in rotation Watan.*—In the case of a Watan in which the representative Watandars are entitled to perform the duties in successive periods, the Collector shall, on the occurrence of the turn of any such representative Watandar to perform the duties, issue a notice to the whole body of registered representative Watandars calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of Section 43 of this Act.

Clause 2.—If not less than three-fourths, including the Watandar whose turn it is to officiate, of the representative Watandars appear at the appointed time and place and unanimously nominate a fit and proper person or persons, being a Watandar or Watandars of the same Watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative Watandar whose turn it is to perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative Vatandar whose turn it is to perform the duties, he or they shall for all the purposes of this Act be

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deemed to be the duly appointed deputy or deputies of the said representative Watandar.

XLI. *Mode of appointment if representative Watandar fail to nominate officiator.*—If in the case of a Watan in which the respresentative Vatandars are entitled to perform the duties in successive periods, the representative Vatandars shall not appear at the time and place appointed under the provisions of the last preceding Section, or shall fail to nominate an officiator, or the requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative Vatandar entitled to officiate and as to appointment of deputies shall apply.

PART VIII.—OFFICIATING VATANDARS AND DEPUTIES.

XLII. *Representative Vatandar to perform duties of office.*—Every representative Vatandars whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy.

XLIII. *Collector to determine number of officiators required.*—The Collector shall determine the number of officiators required for the proper performance of the duties of any office from time to time, and for this requirement may call upon the representative Vatandar aforesaid to appoint a sufficient number of fit and proper persons as deputies, or may direct service in successive periods by representative Vatandars who have hitherto served or are serving contemporaneously.

XLIV. *Collector to appoint deputy if Vatandar fails to appoint.*—If any requisition of the Collector under Section 42, 43, 46 or 48 of this Act is not complied with within two months from the date thereof, the Collector may himself appoint a deputy or deputies.

XLV. *Collector when to refuse service of representative watandar or of deputy nominated by him.*—The Collector shall refuse to accept the service of any representative watandar

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or of any person nominated by a representative watandar to be his deputy, if such representative watandar or person :

"(*a*) Is under eighteen years of

" (*b*) Has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf

" (*c*) Has attained sixty years of age, except when such " person's appointment or continuance in this office is specially permitted by the Collector ;

" (*d*) Is in the opinion of the Collector disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body ;

" (*e*) Has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land Revenue Code, 1879, to be of general bad character ;

" (*f*) Has been sentenced by a criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, and whose disqualification on account of such sentence has not been removed by an order which the Governor in Council is hereby empowered to make, if he shall think fit, in this behalf ;

" (*g*) Declines to forsake, whilst officiating, some other employment which is in the opinion of the Collector incompatible with the due discharge of the duties of the office. "

Collector may refuse to accept service of representative Watandar or deputy nominated by him —The Collector may refuse to accept the service of any representative Watandar whose duty it is to officiate, or of any deputy nominated by him if the Collector has good reason to believe after due inquiry that such Watandar or deputy is of known bad character, or is unfit, by reason of physical or mental inability, or by reason of other employment or calling, to perform efficiently the duties of the office. (Substituted by S. 9 of the Amended Act of 1886.)

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XLVI. *Procedure when representative watandar or his deputy is unfit to officiate.*—If a representative watandar whose duty it is to officiate is, or at any times becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or if he is disabled by lunacy of imbecility of mind, the Collector shall himself appoint a deputy.

If a deputy so appointed becomes unfit to officiate for any of the reasons aforesaid, the Collector shall call upon the representative watandar to appoint another, or himself appoint another, as the case may be.

A deputy appointed by a representative watandar may at any time be removed from office by the Collector at the request of the representative watandar, if, in the opinion of the Collector, there are good grounds for such request.

Procedure if Watandar or deputy is physically or mentally incompetent to officiate.—In the event of any representative Watandar whose duty it is to officiate being or becoming unfit by reason of other employment or calling, or physical incompetency, the Collector shall call upon him to appoint a deputy, and in case of his mental incompetency shall himself appoint a deputy. In the event of a deputy so becoming unfit, the representative Watandar, unless himself mentally incompetent, shall be called upon to appoint another deputy in his place. (Substituted by S. 10 of the Amended Act of 1886.)

XLVII. *On cessation of disqualification representative Watandar entitled to serve.*—Whenever a representative Vatandar whose duty it is to officiate ceases to be disqualified under the provisions of Sections 45 and 46 of this Act he shall become entitled, if otherwise fit, to serve in person or to appoint a deputy in supersession of any deputy appointed by the Collector.

XLVIII. *Second nomination of deputy.*—In the case of any nomination of a deputy the Collector shall allow a second nomination to be made in case of his rejecting the

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first nomination and if he shall reject the second nomination he shall himself appoint a deputy.

XLIX. *Representative watandar may officiate in place of deputy removed or rejected.*—The representative watandar whose duty it is to officiate, may himself, if otherwise fit, perform the duties in place of any deputy removed, or rejected by the Collector, or deceased.

L.—*Collector may nominate deputy if representative Watandar is rejected or removed.*—When a representative Watandar has been rejected as being of general (substituted for the word known by Act of 1886) bad character, or removed on account of grave misconduct, under the provisions of Section 58 of this Act, the Collector himself may nominate and appoint a deputy.

LI. *Female cannot officiate, but may nominate deputy.*—No female shall perform in person the duties of any hereditary office; but if a representative Watandar, or the guardian of a representative watandar, she may appoint a deputy.

LII. *Collector to appoint deputy when officiator is suspended*—During the suspension of an officiating representative Watandar or deputy, and during any vacancy, the duties shall temporarily be performed by a substitute, whether a Watandar or not, appointed by the Collector.

LIII. *Deputy must ordinarily be a member of the same family as the representative watandar whose duty it is to officiate.*—Except as is otherwise provided in the last preceding section and in section 56, and except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandar whose duty it is to officiate, belongs, if there be a member of such family fit and willing to officiate.

If a representative watandar declines to appoint as his deputy any such person as aforesaid, the appointment shall be made by the Collector.

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Deputy may be stranger in certain case only.—In all other cases, except as provided in Section 56 of this Act, none but a Watandar shall be appointed as a deputy, whether by the Collector or any representative Watandar if there be a Watandar of the same Watan fit and willing to serve, and in the event of the representative Watandar declining to appoint a Watandar as his deputy, the Collector shall himself appoint one.

When the Collector himself appoints a deputy under the provisions of Section 50 of this Act, he may, if Government so direct, appoint other than a watandar. (Substituted by S. 12 of the Amended Act of 1886.)

LIV. *Terms of appointment of deputy.*—When the Collector appoints a deputy, it shall be for a term not exceeding five years.

When a Watandar entitled to officiate appoints a deputy, it shall be for a term not less than five years or for life. The term of appointment of a deputy shall cease and determine on the right of his principal ceasing, or on the death of his principal, and any appointment of a deputy on behalf of a representative Watandar under the age of eighteen years shall terminate on the attainment by such representative Watandar of that age.

LV. *Officiator if absent or ill may appoint a temporary substitute.*—In the event of temporary absence or illness, an officiator may arrange with any fit person for the temporary conduct of the duties, but shall be liable in the penalties prescribed in Sections 57 to 61 of this Act.

LVI. *Head of family to be treated as Watandar when right to perform duties as deputies of original Watandar is vested in the family distinct from original Watandars.*—When the hereditary right to perform the duties of an hereditary office as deputies of the original Watandar is vested in a family distinct from that of the original Watandar, the custom shal be recognized, and

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the heads of the family entitled to preform the duties shall be registered and treated as representative Watandars.

PART IX.—PENALTIES.

LVII. *Punishment of officiators.*—It shall be lawful for the Collector to suspend any officiator from office during inquiry into alleged misconduct, and to punish any such officiator for misconduct or neglect of duty by suspension from office for a period not exceeding six months, or by fine not exceeding the fourth part of the annual emolument provided for the officiator. The order of the Collector shall be final in such cases, except when the penalty is inflicted on an hereditary district officer.

LVIII. *Collector may remove officiator with sanction of Government.*—It shall be lawful for the Collector, with the previous sanction of Government in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator, to remove him from office.

LIX. *Officiator removed from office ineligible for re-employment.*—Whoever is removed from office under the preceding Section shall be ineligible for re-employment or continuance in any hereditary office, except with the sanction of Government, and in case he be a representative Vatandar and his period of performing the duties recurs, the appointment of a deputy under the provisions of part VIII of this Act shall on the recurrence of such period be made by the Collector and and not by him.

LX. *Government may direct the forfeiture of a watan.*—When any representative watandar or any deputy or substitute appointed by him is convicted by a criminal court not inferior to a court of session of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor

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in Council may direct the forfeiture of the whole or of any part of the watan. Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

Forfeiture of Watan for misconduct.—When any representative Watandar or any deputy or substitute appointed by him is convicted by any Court of Session of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or any part of the Watan or of the profits thereof. (Substituted by s. 13 of the Amended Act of 1886.)

LXI. *Forfeiture of life interest of officiator and deputy for misconduct of deputy.*—All deputies appointed under this Act shall be subject to the same rules in the performance of the duties of their offices, and to the same penalties, except as otherwise provided, as the representative Watandars themselves are subject to when officiating, and in the case specified in Section 58 of this Act, it shall be lawful for Government to direct the forfeiture of the life interest in the Watan of the representative Watandar entitled to officiate, whether the officiator guilty of misconduct be such representative Watandar himelf or a deputy appointed by him.

LXII. *Order to be passed after investigation.*—No order shall be passed under this part except upon perusal of the judgment of a Court or after investigation recorded in writing.

PART X.—INFERIOR VILLAGE HEREDITARY OFFICES.

LXIII. *Application of Part X.*—This part applies only to hereditary village offices of lower degree than that of Patel or Kulkarni.

LXIV. *Powers granted to Collector.*—The Collector is empowered, subject to the general control of Government—

(*a*) To register the names of individual Watandars as holders of the office, or to register it as held by the whole body of Watandars.

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(*b*) To determine, when individual names are so registered, the rights, duties, and responsibilities among themselves of the person so registered, and the mode in which they shall be selected to perform the duties, whether by selection by the Collector or by defined rotation, or by election by the Watandars, or otherwise, as may be expedient.

(*c*) To require, in cases where the registration is made in the name of the whole body of Watandars, that they appoint so many fit persons as may be necessary to perform the duties which the Collector may assign to them severally and jointly; such appointment to be made within a reasonable time to be previously fixed and notified to them by the Collector. In default of such appointment being made, the Collector may himself appoint.

(*d*) To provide for and enforce the joint responsibility of the whole body for the neglect of duty or misconduct of any of their number of their representatives; and in cases where the crime of cattle poisoning is prevalent, with the sanction of Government to attach, during the pleasure of Government, the Watans of the persons whom he may have reason to believe to have been guilty of, or to have connived at, the commission of the crime.

(*e*) To pass orders in regard to appointment, remuneration, period of service, suspension, fining, and dismissal of persons, officiating, the grant of leave of absence and other matters of discipline not expressly provided for by this or any other law for the time being in force.

Part XI.—The Register.

LXV. *Collector to prepare and keep Register.*—The Collector shall prepare and keep all Registers necessary for the purposes of this Act in the form which Government may from time to time prescribe. There shall be one Register of lands and allowances in consideration whereof liability to

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perform service exists and another of lands and allowances in respect of which no such liability exists.

LXVI. *Non-Service Register what to contain.*—In the Register of lands and allowances the holders whereof are exempt from service, the Collector shall specify—

(*a*) The area of the lands, the survey number and assessment, the quit-rent leviable, and the net revenue alienated by Government

(*b*) The amount and nature of the cash or other allowances and the source from which they are payable.

(*c*) The terms of the settlement under which the exemption is enjoyed.

(*d*) The names of the parties to such settlement with Government as indicated in the Sanads issued to them.

(*e*) Such other particulars as Government may from time to time order to be recorded.

LXVII *Service Register what to contain.*—In the Register of lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify—

(*a*) The area of the lands, the names of the occupants, the survey number and assessment, the quit-rent, if any, leviable, and the net revenue alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable, and the land and allowances assigned for the remuneration of officiators.

(*b*) The names of the heads of families and of the representative Watandars.

(*c*) Whether the service is performed by one representative Watandar or otherwise: if by several in successive periods, the order in which they are to succeed each other.

(*d*) The proportional share of the Watan possessed by each head of family which may be expressed in annas or fractions of a rupee.

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(*e*) The number of officiators required to perform the duties.

(*f*) The nature of the settlement of inferior village Watans referred to in Part X of this Act.

(*g*) Such other particulars as Government may (from time to time) order to be recorded.

LXVIII. *Registers to be corrected.*—The Register kept under this Act shall be corrected or added to on the occasion of any change being made in accordance with the provisions of this Act in the particulars above specified.

PART XII.—MISCELLANEOUS.

LXIX. *Service to be performed by Watandars.*—All Watandars of whatever denomination whose liability to serve has not been commuted are legally bound, subject to the provisions of this Act, to render such service as has been customary or as is required by law.

LXX. *Watan records the property of Government.*—All records which have been or may be prepared by any watandar or by any officiator in an hereditary office in pursuance of the duties of the office, or by order of a superior officer or of the present or former Government, are hereby declared to be the property of Government, and the Collector may enforce their production or the production of any State records in the possession of a watandar or of an officiator, in accordance with the provisions of sections 25 and 26 of the Bombay Land Revenue Code, 1879.

Records the property of Government.—All records which have been or may be prepared by any Watandar in pursuance of the duties of the office, or by order of his superior officer, or of the present or former Government, are hereby declared to be the property of Government, and the Collector is hereby empowered to demand their production. (Substituted by S. 14 of the Amended Act of 1886.)

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LXXI. *Watandars may sign village records.*—With regard to hereditary offices not inferior to that of Patel or Kulkarni, it is hereby declared that every head of family shall have the privilege of signing the abstract of village land and revenues or other village papers which it may be customary for him to sign.

PART XIII.—PROCEDURE AND APPEALS.

LXXII. *Clause* 1.—*Evidence to be taken.*—It shall be lawful for the Collector or other officer conducting an investigation under this Act to take evidence, and in Sections 193 and 228 of the Indian Penal Code the words "judicial proceedings" shall be taken to include any proceeding under this Act.

Clause 2.—Every person who shall have been summoned to give evidence or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend, or to produce such document.

LXXIII. *Clause* 1.—*Orders under Parts III, V, VI and VII to be passed after investigation in writing.*—Except as hereinafter provided in clause 2 of this Section, no order under Part III of this Act directing commutation of a Watan, or under Part V of this Act assigning the remuneration of officiators, or under Part VI of this Act determining the custom of the Watan as to service and what persons should be registered as heads of families or representative Watandars, or under Part VII of this Act, determining the periods of service, shall be passed, unless after an investigation recorded in writing and a proper opportuntity afforded for the hearing of claims and the production of evidence. In each such investigation, and in removals from office under Section 58 of this Act, the Collector or other officer shall record his decision with the reasons therefor in his own handwriting.

Clause 2.—*Certain decisions passed since 1866 to be accepted in lieu of fresh investigation.*—Unless the Governor in Council

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shall otherwise direct, decisions passed subsequently to the year 1866 after an investigation recorded in writing, and after a proper opportunity had been afforded for the hearing of claims and the production of evidence, and which are recorded, with the reasons therefor, in the handwriting of a Collector or his Assistant or Deputy, shall be accepted, in so far as they may not be inconsistent with the provisions of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the Register required in Section 67 thereof. If any details necessary for the said Register have not been recorded in any decision of the nature described above, but are forthcoming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the Register. Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary.

LXXIV. *Proceedings of Collector under general control of Revenue Commissioner.*—The proceedings of the Collector shall be under the general control of the Revenue Commissioner appointed under Regulation V of 1830, or other law in force for the time being, and of Government.

LXXV. *Mamlatdar may make investigation under Part X.*—The Collector may require any investigation under Part X of this Act to be made by a Mamlatdar or Mahalkari, but the decision thereon shall be made by the Collector.

LXXVI. *No appeal to lie, save where specially provided.*—No appeal shall lie from any order made under Section 64, clause *e* of this Act before final order, nor from any order registering any fact specified under Section 67, clauses *b*, *c*, *d* and *e* of this Act, where the effect of such order is merely to register the same facts as are already recorded in the existing registers kept according to law or under the orders of Government.

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LXXVII. *Appeals.*—Except as hereinbefore provided, one appeal only shall lie from every decision passed after investigation recorded in writing by a Collector, or by an Assistant Collector, or Deputy Collector empowered under the provisions of Bombay Act I of 1868.

Such appeal, if ftom the decision of an Assistant Collector, or Deputy Collector so empowered, shall lie to the Collector, and shall be made within sixty days from the date of the order appealed against.

Such appeal, if from the decision of the Collector, shall lie to the Revenue Commissioner, and shall be made within ninety days from the date of the order appealed against.

In computing the above periods the time required to prepare a copy of the order or decision appealed against shall be excluded.

LXXVIII. *Copy of order to accompany petition of Appeal. Appeal may be summarily rejected.*—Every petition of appeal shall be accompanied by a copy of the order or decision appealed against, and it shall be competent for the officer before whom the appeal is presented to reject the appeal if on perusal of the petition it appears to him that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the order appealed against.

LXXIX. *Government may call for proceedings.*—Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed, and may reverse or modify the order as shall seem fit, or, if it seem necessary, may order a new inquiry.

LXXX. *Notice how to be served.*—Service of any notice given under this Act shall be deemed to have been made by the notice being affixed in writing to the wall of the village chavdi or other public place in the village not less than seven

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days before action is required to be taken by any person thereon.

LXXXI. *Recoveries how to be made.*—All recoveries of profits from land, assessments, emoluments or penalites under this Act, may be made as provided by any law for the time being in force relating to the recovery of the land revenue.

LXXXII. *Government to frame Rules.*—Government may frame rules not inconsistent with this Act for the guidance of its officers in cases not expressly provided for, and may from time to time modify or revoke any such rules.

LXXXIII. *Government to determine duties of Hereditary Officers.*—Except as is otherwise provided in Section 18 of this Act, Government shall have power, in cases where doubt exists, to determine what duties appertain to any hereditary office.

LXXXIV. *Grant of powers under Act to Special Officers.*—(1) The Governor in Council may from time to time confer on any officer specially selected for the purposes or so far as concerns any alienated village on the holder or on any of the holders of such village or any agent of the holder of such villages all or any of the powers and duties which under this Act are required to the performed by a Revenue Commissioner or a Collector, and may authorize the delegation to any Mamlatdar or Mahalkari of the power to fine hereditary village officers in sums not exceeding two rupees.

LXXXV. *This Act not to affect Bombay Act VIII of 1867.*—Nothing in this Act contained shall be deemed to affect Bombay Act VIII of 1867 or any other law for the time being in force, defining the duties and powers of village officers or imposing penalties for misconduct, and all references in such laws to Act XI of 1843 shall be taken as made to this Act.

"Powers and duties conferred under this section shall be exercised or performed subject to such conditions, if any, in addition to those specified in this Act as the Governor in

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Council shall from time to time think fit to prescribe, and any order conferring powers and duties under this section may at any time be cancelled by the Governor in Council." (Added by s. 13 of Amended Act of 1886.)

SCHEDULE.

Number and year.	Subject or Title.	Extent of Repeal.
Reg. XVI of 1827.	Hereditary District and village Officers inclusive of Village Accountants.	Sections 19 and 20.
Reg. V of 1833.	For declaring all Hereditary District and Village Officers when entrusted by virtue of their offices with the charge or collection of the public money to be officers of receipts and liable to certain penalties for embezzlement and for providing for the recovery of public money from such offices; for extending the provisions of clauses second, third, fourth, and fith, Sec. XI, Reg. XVI of 1827, to certain Native Officers on the Collecor's Establishment and for admitting the employment of deputies of Hereditary District Officers in other cases than those laid down in Section XVIII, Reg. XVI of 1827.	Section 4.
Act XI of 1843.	For regulating the service of Hereditary Officers under the Presidency ot Bombay.	So much as is not already repealed.
Bombay Act III of 1862.	To amend Act XI of 1843.	The whole Act.

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SECOND SCHEDULE.

Offences referred to in Section 60.

Description of Offences.	Sections of the Penal Code under which punishable.
" (1) Every offence described in Chapter VI of the Indian Penal Code	121, 121A, 122-124, 124A, 125-130.
" (2) Causing disappearance of evidence of any offence committed or giving false information touching it to screen the offender, when the offence committed is a capital offence, or punishable with transportation for life, or imprisonment for ten years	201.
" (3) Harbouring an offender, if such offender's offence be capital, or punishable with transportation, or imprisonment for ten years.	212.
" (4) Taking gift, &c., to screen an offender from punishment, if such offender's offence be capital, or punishable with transportation for life, or with imprisonment for ten years.	213.
" (5) Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if such offender's offence be capital, or punishable with transportation for life, or with imprisonment for ten years	216."

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(6) Harbouring ... 216A.

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BOMBAY ACT No. V OF 1886.

An Act to amend Bombay Act III of 1874.

(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 28th January 1887.)

Bombay III of 1874.—Whereas it is expedient to amend the Bombay Hereditary Offices Act, 1874, in manner hereinafter appearing ; it is enacted as follows :—

2. *Female members to be postponed.*—Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed, in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

Widow's interest.—The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

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BOMBAY LAND REVENUE CODE.

BOMBAY ACT No. V OF 1879. [1]

(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 17th July 1879.)

An Act to consolidate and amend the law relating to Revenue officers and the Land-revenue in the Presidency of Bombay.

Preamble.—Whereas it is expedient to consolidate and amend the law relating to Revenue-Officers, and to the assessment and recovery of land-revenue, and to other matters connected with the land-revenue-administration; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. *Short title.*—This Act may be cited as the Bombay Land-Revenue Code, 1879.

Local extent.—It extends to the whole of the Presidency of Bombay except the Scheduled Districts, as defined by Act XIV of 1874, and the City of Bombay. [2]

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[1] The proceeds of all fees levied under Bom. Act V of 1879 for permission to remove sand or to quarry are to be credited to the Local Fund constituted by Bom. Act I of 1884—see s. 44 of the latter Act.

[2] Bom. Act V of 1879 (with the exception of s. 104) has been extended by various Notifications under s. 5 of the Scheduled Districts Act, 1874, to nearly the whole of Sind, *viz.*, to the districts of Karachi, Hyderabad, Shikarpur and Thar and Parkar, and to the taluqas of Jacobabad, Kashmor and Thul in the Upper Sind Frontier District—see Appendix to Vol. I of the Bombay Code, 2nd Edition, pages XXXVI to XLIII.

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[*Commencement*]. *Repealed by Act XVI of 1895.*

2. *Enactments repealed.*—The Regulations and Acts mentioned in the Schedule A [3] are repealed to the extent specified in the third column thereof, but not so as to render invalid anything done in accordance with any of them.

All references made in any Bombay Regulation or in any Act of the Governor of Bombay in Council, or in any Act of the Governor General in Council passed before the coming into operation of the Indian Councils Act, 1861, [4] to any enactment hereby repealed shall be read as if made to the corresponding portion of this Act.

And all rules prescribed, appointments made, securities furnished, powers conferred, orders issued and notifications published under any such enactment, and all other rules (if any) now in force and relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, furnished, conferred, issued and published hereunder.

S. 85 and the last 15 words of s. 58 are not in force in the Panch Mahals—see Act VII of 1885, s. 2.

Ss. 68, 72, 73, 74, 99, cl. (*b*), 104, para. 2, 112, 150, cl. (*b*) and 153 of Bom. Act V of 1879 do not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends; and ss. 103, 118, 119, 123, 136, 150, cl. (*f*), and 162 of the Act are subject to modification when applied to any such village—see Bom. Act I of 1880, ss. 1 and 39.

Ss. 38 to 40, 44, 60 to 67, 76, 85, 109, 110, 116, 127 to 136, 163, 216 and 217, of Bom. Act V of 1879 do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Taluqdars Act, 1888, extends; and ss. 3, cl. (*l*), 46, 54, 88, 89, 94, 111, 113, 147, 150, cl. (*f*), 160, 162, 214 of the Act, and the words "occupant" "registered occupant" and "occupancy" throughout the Act, are subject to modification when applied to any such estate—see Bom. Act VI of 1888, ss. 1 and 33.

[3] Words repealed by Bom. Act III of 1886 are omitted.

[4] Printed in the Collection of Statutes relating to India, Ed. 1899 Vol. I, p. 341.

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And all proceedings now pending, which have been commenced under any enactment hereby repealed, shall be deemed to have been commenced under this Act, and shall hereafter be conducted in accordance with the provisions of this Act.

3. *Interpretation-clause.*—In this Act, unless there be something repugnant in the subject or context.—

[1] (1) "Revenue-officer" means every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land-revenue or of the surveys, assessment, accounts or records connected therewith:

(2) "Survey-officer" means an officer appointed under, or in the manner provided by, section 18 [2]:

(3) the word "Collector" means the Collector of the district:

(4) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory:

(5) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same:

(6) "survey-number" means a portion of land of which the area and other particulars are separately entered, under an indicative number in the survey-records of the village town or city in which it is situated, and includes a recognized share of a survey-number:

(7) "recognized share of a survey-number" means a sub-division of a survey-number separately assessed and registered:

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[1] As to the local modification of s. 3, cl. (*1*), see para. 4 of foot note [2] on p. 196, *supra*.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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(8) "building-site" means a portion of land held for building purposes, whether any building be actually erected thereupon or not, and includes the open ground or court-yard enclosed by, or adjacent to, any building erected thereupon :

(9) "boundary-mark" means any erection, whether of earth, stone or other material, and also any hedge, [1] unploughed ridge, or [1] strip of ground, or other object whether natural or artificial, set up, employed or specified by a Survey-officer, or other Revenue-officer, having authority in that behalf, in order to designate the boundary of any division of land :

(10) "to hold land" means to be legally invested with a right to the posssession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting :

(11) "holder" or "landholder" signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public ; it includes a mortgagee vested with a right to possession :

(12) "holding" signifies land over which such right extends :

(13) "superior holder" signifies a holder entitled to receive from other holders rent or land-revenue on account of lands held by them, whether he be accountable or not for the same, or any part thereof, to the Government :

(14) "inferior holder" signifies a holder liable to pay the rent or land-revenue to a superior holder, whether on account of such superior holder or Government :

(15) "tenant" signifies a person who holds by a right derived from a superior holder called his "landlord," or from his landlord's predecessor in title :

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[1] These words were substituted for the original word by Bom. Act VI of 1901, s. 2.

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(16) "occupant" [1] signifies a holder of unalienated land, or, where there are more holders than one, the holder having the highest right in respect of any such land,

or where such highest right vests equally in more holders than one, any one of such holders :

(17) "Registered occupant" [ ] signifies a sole occupant or the eldest or principal of several joint occupants whose name is authorizedly entered in the Government records as holding unalienated land whether in person or by his co-occupant, tenant, agent, servant or other legal representative :

(18) "occupancy" [1] signifies the sum of the rights vested in an occupant as such :

(19) "alienated" means transferred in so far as the rights of Government to payment of the rent or land-revenue are concerned, wholly or partially, to the ownership of any person :

(20) the words "village, town or city" include all lands belonging to any village, town or city :

(21) the words "revenue-year" or "year" mean the period from, and exclusive of, the thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year.

(22) [*Definition of "section"*] *Repealed by Bom. Act III of 1886.*

(23) [*Definition of "this chapter"*] *Repealed by Bom. Act III of 1886.*

CHAPTER II.

CONSTITUTION AND POWERS OF REVENUE-OFFICERS.

4. *Chief controlling authority in revenue-matters. Extent of territories under Commissioners.*—The chief controlling authority in all matters connected with the land-revenue is vested in the Commissioner, subject to the Governor in Council.

[1] As to the local modification of the words "occupant," "registered occupant" and "occupancy," see para. 4 of foot-note [2] on p. 196, *supra*.

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There shall be one or more Commissioners as the Governor in Council, subject to the orders of the Government of India, may direct; and the Governor in Council shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified.

Division.—The territories under each Commissioner shall form, and be called, a division [1].

5. *Appointments and duties of Commissioners.*—The Commissioners shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and so far as is consistent therewith all such other powers or duties of appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by Government.

6. *Assistants to Commissioners.*—Each Commissioner shall have such number of assistants as the Governor in Council may from time to time sanction, their appointment being made by the Governor in Council. Assistants so appointed shall perform such duties as the Commissioners, to whom they are respectively subordinate, may from time to time direct.

7. *Division to be divided into districts.*—Each division, under the control of the Commissioner, shall be divided into such number of districts with such limits as may from time to time be prescribed by a duly published order of the Governor in Council.

District: taluqa.—And each such district shall consist of such number of taluqas, and each taluqa shall consist of such number of mahals and villages, as may from time to time

[1] Words repealed by Act XVI of 1895 are omitted.

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be prescribed in a duly published order of the Governor in Council.[1]

8. *Collector of districts.*—The Governor in Council shall appoint in each district an officer who shall be the Collector [1] and who shall be subordinate to the Commissioner of his division, and may exercise, throughout his district, all the powers, and discharge all the duties, conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act according to the instructions of Government.

9. *Assistant and Deputy Collectors.*—The Governor in Council may appoint to each district so many Assistant Collectors and so many Deputy Collectors as he may deem expedient; the Assistants shall be called "First," "Second," "Supernumerary," etc., as may be expressed in the order of their appointment.

To be subordinate to Collector.—All such Assistant and Deputy Collectors and all other officers employed in the land-revenue-administration of the district shall be subordinate to the Collector.

10. *Their duties and powers.*—Subject to the general orders of Government, a Collector may place any of his assistants or deputies in charge of the revenue-administration of one or more of the taluqas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII [2], perform all the duties and exercise all the powers conferred upon a Collector [1] by this Act or any other law at the time being in force, so far as regards the taluqa or taluqas in his charge:

[1] Words repealed by Act XVI of 1895 are omitted.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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Provided that the Collector may, whenever he may deem fit, direct any such assistant or deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other assistant or deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of taluqas, the Collector shall, under the general orders of Government, assign such particular duties and powers as he may from time to time see fit.

11. *Collector of district in case of temporary vacancy.*—If the Collector is disabled from performing his duties, or for any reason vacates his offices or leaves his district, or dies, his assistant of highest rank present in the district shall, unless other provision has been made by Government, succeed temporarily to his office, and shall be held to be the Collector [1] under this Act until the Collector resumes charge of his district, or until the Governor in Council appoints a successor to the former Collector and such successor takes charge of his appointment.

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

12. *Mamlatdar; his appointment.*—The chief officer entrusted with the local revenue-administration of a taluqa shall be called a Mamlatdar. He shall be appointed by the Commissioner of the division in which his taluqa is situated.

His duties and powers.—His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of Government.[1]

[1] Words repealed by Act XVI of 1895 are omitted.

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13. *Mahalkari.*—Whenever it may appear necessary to the Governor in Council, the Collector may appoint a Mahalkari to be in charge of a defined portion of a taluqa ; and subject to the orders of Government and of the Commissioner, the Collector may assign to him within his local limits such of the duties and powers of a Mamlatdar as he may from time to time see fit, and may also from time to time direct whether the Mahalkari's immediate superior shall for the purposes of section 203 [1], be deemed to be the Mamlatdar or the Assistant or Deputy Collector, or the Collector in charge of the taluqa.

14. *Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties.*—It shall be competent to a Mamlatdar or Mahalkari, subject to such general orders as may from time to time be passed by the Commissioner or by the Collector, to employ any of his subordinates to perform any portion of his ministerial duties ; provided that all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Mamlatdar or Mahalkari.

Mahal.—The portion of a taluqa in the charge of a Mahalkari shall be called a Mahal. [2]

15. *Mamlatdar or Mahalkari in case of temporary vacancy.*—If a Mamlatdar or Mahalkari is disabled from performing his duties, or for any reason vacates his office, or leaves his taluqa or mahal, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector shall succeed temporarily to the said Mamlatadar's or Mahalkari's office, and shall be held to be the Mamlatdar or Mahalkari under this Act until the Mamlatdar or Mahalkari resumes charge of his taluqa or mahal, or until such time as a successor is duly appointed and takes charge of his appointment.

16. *Stipendiary patel and village-accountant where to be appointed.*—In villages where no heredirary patel or village-

[1] Words repealed by Bom. Act III of 1886 are omitted.
[2] Words repealed by Act XVI of 1895 are omitted.

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accountant exists, it shall be lawful for the Collector under the general orders of Government and of the Commissioner to appont a stipendiary patel or a village-accountant who shall perform respectively all the duties of hereditary patels or village-accountant as hereinafter prescribed in this Act or in any other law for the time being in force, and shall hold their situations under the rules in force with regard to subordinate Revenue-officers.

Saving of rights of holders of alienated villages.—Nothing in this section shall be held to affect any subsisting rights of holders of alienated villages or others in respect of the appointment of patels and village-accountants in any alienated or other villages.

17. *Village-accountant to keep records prescribed by Collector.*—Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts and other records shall be kept by the village-accountant. [1]

And to prepare public writings.—It shall also be the duty of the village-accountant to prepare, whenever called upon by the patel of his village, or by any superior Revenue or Police officer of the taluqa or district to do so, all writings connected with the concerns of the village which are required either for the use of Government or the public, such as notices, reports of inquests, and depositions and examinations in criminal matters.

18. *Survey-officers.*—For the purposes of Chapters VIII, IX and X [2] the Governor in Council may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commissioner of Survey," "Superintendent of Survey," "Survey-settlement-officers" and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

[1] Words repealed by Act XVI of 1895 are omitted.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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Their duties and powers.—Subject to the orders of the Governor in Council, the officers so appointed are vested with the cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

19. *Combination of offices.*—It shall be lawful for the Governor in Council to appoint one and the same person, being otherwise competent according to law, to any two or more of the offices provided for in this chapter, or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

20. *Appointments to be notified.*—The appointment of all officers mentioned in sections 4 to 13 and 18 and 19 shall be duly notified.

Acting appointments.—Any officer appointed to act temporarily for any such officer shall exercise the same powers and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

21. *Establishments.*—Subject to rules or orders made under section 214, the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, namely :—

the Commissioners,
„ Collectors,
„ Commissioner of Survey,
„ Superintendent of Survey,
„ Survey-settlement-officer.

The appointment of all members of the establishments of all other officers mentioned in the foregoing sections of this chapter shall be made in their respective departments by the

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Collector and the Superintendent of Survey: provided that it shall be lawful for them to delegate such portion of this power as they may deem fit to any subordinate officer, but subject to the retention of a right of revision at any time of the appointments that may be made by such subordinate officers.

22. *Seals.*—The Governor in Council shall from time to time by notification prescribe what Revenue-officers shall use a seal, and what size and description of seal shall be used by each of such officers. [1]

CHAPTER III.

OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE-OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

23. *Government to direct what officers shall furnish security, and to what amount.*—It shall be lawful for Government to direct that such Revenue-officers as it deems fit shall, previously to entering upon their office, furnish security to such amount as Government may in each case deem expedient either by deposit of Government-paper duly endorsed, accompanied by a power to sell, or in the form contained in Schedule B. [2]

The amount for which such security shall be furnished may be varied, from time to time, by order of Government, which shall also determine the number of sureties to be required when security is taken in the form of Schedule B.

24. *Fresh or additional security.*—The Collector or the Superintendent of Survey may at any time after security has been given by a Revenue-officer subordinate to him, if it appear to him that the security taken is unsatisfactory, or if the officer is transferred to an office for which larger security is required, or for other sufficient reason, demand fresh or additional security,

[1] Words repealed by Act XVI of 1895 are omitted.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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and in case of the officer failing to give such security within one month after its being required of him may suspend or dismiss him: Provided always that no greater security shall be demanded than is required by the orders of Government under the last preceding section.

25. *Demands for money, papers, etc., to be made known in writing to person concerned.*—The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall in all cases in which he may have a claim on any Revenue-officer or any person formerly employed as such in his department or district for public money or papers or other Government-property, by writing under his official seal, if he use one, and signature, required the money, or the particular papers or property detained, to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

Who may be arrested and confined in jail if he fail to produce them.—If the officer or other person aforesaid shall not discharge the money, or deliver up the papers or property, as directed, he may cause him to be apprehended, and may send him with a warrant, in the form of Schedule C, to be confined in the civil jail till he discharges the sums or delivers up the papers or property demanded from him:

Limit to confinement.—Provided that no person shall be detained in confinement by virtue of any such warrant for a longer period than one calendar month.

26 *Public moneys may also be recovered as arrears of revenue; and search warrant issued for recovery of papers or property.*—The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey-depart-

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ment in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land-revenue from defaulters, and for the purpose of recovering public papers or other property appertaining to Government may issue a search-warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1882 [1]

Persons in possession of public moneys, etc., bound to give them up.—It shall be the duty of all persons in possession of such public moneys, papers or other property appertaining to Goverment to make over the same forthwith to the Collector, and every person knowing where any such property is concealed shall be bound to give information of the same to the Collector.

27. *Surety liable in same manner as principal.*—The surety or sureties of such officer or other person as is aforesaid, who may enter into a bond, in the form of Schedule B, shall be liable to be proceeded against jointly and severally in the same manner as his or their principal is liable to be proceeded against, in case of default, and notwithstanding such principal may be so proceeded against :

Extent of liability.—Provided always that in any case of failure to discharge or make good any sum of money due to Government or to produce any property of Government of ascertained value, no greater sum than is sufficient to cover any loss or damage which the Government may actually sustain by the default of the principal shall be recovered from the surety or sureties as the amount which may be due from such surety or sureties under the terms of the security-bond executed by him or them.

[1] The reference to Chap. XXVII of Act X of 1872 is altered in accordance with Act X of 1882, s. 3.

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Sureties not liable to imprisonment, if penalty paid.—And provided also that the said surety or sureties shall in no case be liable to imprisonment in default of producing public papers or property, if he or they pay into the Government treasury the whole or such part of the penalty named in the bond as may be demanded.

28. *Officer or surety in jail may, by furnishing security, obtain release.*—If any officer or other person as aforesaid, or his surety or sureties, against whom a demand is made, shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety if in custody to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

29. *Liability of surety not affected by death of principal or his taking different appointment.*—The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies any situation in which security is required under section 23 and until his bond is cancelled.

Liability of heirs of deceased officer.—The heirs of a deceased officer shall be liable by suit in the Civil Court for any claims which Government may have against the deceased, in the same way as they would be for similar claims made by an individual.

30. *How surety may withdraw from further liability.*—Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating in writing, to the officer to whom the bond has been given, that he desires so to withdraw; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing, as to all demands upon his principal concerning

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moneys, papers or other property for which his principal may become chargeble after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

CHAPTER IV.

Of certain Acts prohibited to Revenue-officers and of their Punishment for Misconduct.

31. *Revenue-officers, without permission,*

No Revenue-officer shall, except with the express permission of Government, or of the Collector, or Superintendent of Survey to whom he is subordinate,—

Not to trade;

(1) engage in trade, or be in any way concerned, directly or indirectly, either as principal or agent, in any commercial transaction whatever;

Not to purchase at public sale;

(2) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may, under the provisions of this Act or of any other law for the time being in force, be sold by order of any reveuue or judicial authority in the district in which such officer is at the time employed;

Not to be concerned in revenue;

(3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district in which he is at the time employed;

and no Revenue-officer shall—

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Not to make private use of public money or property;

(4) derive either for himself or for any other individual any profit or advantage beyond his lawful salary or emolument from any public money or property with the collection or charge of which he is entrusted or connected; or

Not to make or receive under exactions or presents.

(5) demand or receive, under the colour or by the exercise of his authority as such Revenue-officer, or by way of gratification or otherwise, or knowingly permit any other person to demand or receive on his behalf, any sum or any consideration whatever over and above what he is legally entitled to demand or receive under the provisions of this Act or of any other law for the time being in force.

32. *Power of fining, reducing, suspending and dismissing in whom to vest.*—Subject to rules or orders made under section 214, all Revenue-officers may be fined, reduced, suspended or dismissed for any such offence as is described in the last preceding section, or for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct by the authority by whom such officer is appointed; or by any authority superior to such authority; and this power may be delegated by such first-mentioned authority, in whole or in part, to any subordinate officer on the same condition that the power of appointment may be delegated under section 21:

Officer to be fined, etc., only by order of Government.—Provided that, excepting Mamlatdars, no Revenue-officer, whose monthly salary exceeds rupees two hundred and fifty, shall be fined, suspended, reduced or dismissed except by order of the Governor in Council.

33. *Order to be made in writing.*—When any Revenue-officer passes an order for fining, reducing, suspeding or dismissing any subordinate officer, he shall record such order

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or cause the same to be recorded, together with the reasons therefor, in writing under his signature in the language of the district or in English.

34. *Fine not to exceed two months' pay.*—No fine inflicted under the foregoing provisions shall in any case exceed the amount of two months' pay of the office held by the offender at the time of the commission of the offence.

How recovered.—All fines inflicted under this chapter may be recovered from the officer's pay or, if necessary, may be realized in the same way as arrears of land-revenue are recoverable under this Act.

35. *Appeals.*—If the Collector or Superintendent of Survey whether of his own motion or on appeal from a subordinate officer's order, pass an order for fining, reducing, suspending or dismissing any Revenue-officer subordinate to him whose monthly salary does not exceed thirty-five rupees, or

if any authority superior to the Collector or Superintendent of Survey pass any such order against a Revenue-officer whose monthly salary does not exceed ninety-nine rupees, no appeal shall lie against such order, except and provided always that at least one appeal shall lie against every order made, of his own motion, by any authority other than Government, for dismissing an officer whose monthly salary exceeds thirty-five rupees.

And no appeal shall lie against any order for inflicting a fine not exceeding one rupee.

36. *Liability to criminal prosecution not affected.*—Nothing in this chapter shall affect any officer's liability to a criminal prosecution for any offence with which he may be charged.

Officer may be suspended during trial, and subsequently suspended, reduced or dismissed.—Any officer subjected to such prosecution may be suspended pending the trial, and at its close

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may, upon a consideration of the circumstances brought to light during its course, be suspended, reduced or dismissed by any competent authority, whether he have been found guilty or not.

CHAPTER V.

OF LAND AND LAND-REVENUE.

Land.

37. *Public road, etc., and lands not property of others belong to Government.*—All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nalas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, which are not the property of individuals or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation—In this section "high-water-mark" means the highest point reached by ordinary spring-tides at any season of the year.

[1] 38. *Lands may be assigned for special public purposes*,—Subject to the general orders of Government, it shall be lawful for Survey-officers whilst survey-operations are

[1] As to the local repeal of ss. 38 to 40, see para 4 of foot-note [4] on p. 196, *supra*.

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proceeding under Chapter VIII [1], and at any other time for the Commissioner, to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons in unalienated villages or unalienated portions of villages, for free pasturage for the village-cattle, for forest-reserves, or for any other public or municipal purpose ;

and when assigned, not to be otherwise appropriated without sanction.—And lands assigned specially for any such purpose shall not be othewise appropriated or assigned without the sanction of the Commissioner ; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

[2] 39. *Regulation of use of pasturage.*—The right of grazing on free pasturage-lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner.

The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

Trees.

[2] 40. *Concession of Government rights to trees in case of settlements completed prior to Act.*—In villages, or portions of villages, of which the orginal survey-settlement has been completed before the passing of this Act, the right of Government to all trees in unlienated land, except trees reserved by Government, or by any Survey-officer, whether by express order made at, or about, the time of such settlement. or under any rule or general order in force at the time of such settlement, or by notification made and published at, or any time after, such settlement, shall be deemed to have been conceded to the occupant.

[1] Words repealed by Bom. Act III of 1886 are omitted.

[2] As to the local repeal of ss. 38 to 40, see para 4 of foot-note.

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But in the case of settlements completed before the passing of Bombay Act I of 1865 [1] this provision shall not apply to teak, blackwood or sandalwood-trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

Concession in case of settlements completed after passing of Act.—In the case of villages or portions of villages of which the original survey-settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land, except in so far as any such rights may be reserved by Government, or by any Survey-officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey-settlement of the district in which such village or portion of a village is situate.

Concession in case of land taken up after completion of settlement.—When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey-settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land, which may not have been, or which shall not hereafter be, expressly reserved, at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey-settlement of the said village or portion of a village.

41. *Government trees and forests.*—The right to all trees specially reserved under the provision of the last preceding section

[1] Bom. Act I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act.

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and to all trees, brushwood, jungle or other natural product growing on land set apart for forest-reserves under section 32 of Bombay Act I of 1865 [1] or section 38 of this Act, and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as Government may from time to time direct.

42. *Road-side trees.*—All road-side trees which have been planted and reared by, or under the orders of, or at the expense of, Government, or at the expense of local funds, vest in Government.

But in the event of such trees dying, or being blown down or being cut downby order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder: Provided that the tree shall not be lopped except under the orders of the Collector.

If the holder of any land in which such trees are growing shall so desire and shall make an application to the Collector for the purpose at any time within two years from the date on which this Act shall come into operation the Collector shall deduct the strip of land covered by the said trees from his holding, and remit thenceforward the proportionate amount of land-revenue due upon strip so deducted.

Any strip of land so deducted shall, with the trees upon it, vest thereafter in Government.

43. *Recovery of value of trees, etc., unauthorizedly appropriated.*—Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove any other natural product which is the property of Government shall be

[1] Bom. Act I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act.

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liable to Government for the value thereof, which shall be recoverable from him as an arrear of land-revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise, and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

[1] 44. *Regulation of supply of fire-wood and timber for domestic or other purposes.*—In villages or lands in which the rights of Government to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut firewood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest-reserves subject to such privileges, and in all other cases in which such privileges exist n respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct.

In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

Land-revenue.

45. *All land liable to pay revenue unless specially exempted.*—All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land-revenue to Government according to the rules hereinafter enacted, except such as may be wholly exempted under the provisions

[1] As to the local repeal of s. 44, see para. 4 of foot-note [2] on p. 196, *supra*.

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of any special contract with Government or of any law for the time being in force.

Saving of right to levy revenue.—But nothing in this Act shall be deemed to affect the power of the legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

[1] 46. *Liability of alluvial lands to land-revenue.*—All alluvial lands, newly-formed islands or abandoned river-beds which vest, under any law for the time being in force in any holder of alienated land, shall be subject in respect of liability to the payment of land-revenue to the same privileges, conditions or restrictions as are applicable to the original holding in virtue of which such lands, islands or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

47. *Right to remission in cases of diluvion.*—Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council, to a decrease of assessment if any portion thereof, not being less than half an acre in extent, nor less than one-tenth of the holding, is lost by diluvion.

"*Holding*" *defined.*—The word "holding" in this section shall be deemed to mean a survey-number or any division of land on which a distinct or aggregate assessment has been fixed.

48. *Lands chargeable with land-revenue.*—The land-revenue leviable under the provisions of this Act shall be chargeable—

[1] As to the local modification of s. 46, see para. 4 of foot-note [2] on p. 196, *supra*.

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(*a*) upon land appropriated for purposes of agriculture ;

(*b*) upon land [1] appropriated for any purpose [1] from whlch any other profit or advantage than that ordinarily acquired by agriculture is derived ;

(*c*) upon land appropriated for building-sites.

[2] *Assessment variable if purpose for which land is held is changed.*—And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall, when such land is appropriated for any other of the said purposes, notwithstanding that the term, if any, for which such assessment was fixed may not have expired, be liable to be altered and fixed at a diffent rate by such authority and subject to such rules as to the fixing and periodical revision thereof as the Governor in Council prescribes in this behalf. [2]

Land held rent-free for one purpose assessable if used for another.—And any land allowed by Government to be held free of assessment on condition of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

Appropriation of land to certain purposes may be prohibited.—It shall also be lawful for the Collector or for a Survey-officer, subject to rules or orders made in this behalf under section 214, to prohibit the appropriation of any unalienated land liable to the payment of land-revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes.

49. *Land indirectly taxed to State, or*—When it has been customary to levy any special or extra cess, fine or tax,

[1—1] These words were inserted by Bom. Act VI of 1901, s. 3 (*1*).

[2] This para was substituted for the original para. by Bom. Act VI of 1901, s. 3 (2).

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however designated, from any holder of land, which, though nominally wholly or partially exempt from the payment of land-revenue, has by the exaction of such cess, fine or tax been indirectly taxed to the State,

Land liable to occasional assessment,—Or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

Liable to commuted assessment.—The said assessment, cess, fine or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amounts as the Commissioner shall deem to be fair equivalent of the assessment, cess, fine or tax for which it is substituted, and shall not be in excess of the assessment to which the land would be ordinarily subject if no right to exemption existed in respect thereof.

50. *Superior holder may recover commuted assessment from inferior holder.*—Whenever any such cess, fine or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

51. *Excess of assessment may be laid on land inadequately assessed held with it.*—When it has been customary to levy a larger revenue, under the name of "*veta*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess ~~of revenue payable~~ on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

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[1] 52. *Assessment by whom to be fixed.*—On all lands which are not wholly exempt from the payment of land-revenue, or on which the assessment has not been fixed under the provisions of section 102 or 106, the assessment of the amount to be paid as land-revenue shall, subject to rules or orders made in this behalf under section 214, be fixed at the discretion of the Collector, for such period as he may, by general or special orders of Government in this behalf, be authorised to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

Proviso.—Provided that in the case of lands partially exempt from land-revenue, or the liability of which to payment of land-revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting according to the nature of the said rights. [2]

53. *Register of alienated lands.*—A register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands the alienation of which has been established or recognized under the provisions of any law for the time being in force; and, when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated land has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom he may deem entitled to the same a certified extract from the said register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or

[1] This section was substituted for the original s. 52 by Bom. Act V of 1901, s. 4.

[2] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. Act VI of 1901, s. 5.

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destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

[1] 54. *Settlement of assessment with whom to be made*; The settlement of the assessment of each portion of land, or servey-number, to the land-revenue, shall be made with the person who, under section 136, is primarily responsible to Government, for the same.

When to be made with under-holder.—If the said person be absent, and have left no known authorized agent in the district, so that the settlement of the assessment cannot be concluded with him, such settlement may be made with the person holding under him, or in occupation of the land.

55. *Rates for use of water.*—The Governor in Council may authorize the Collector or the officer in charge of a survey, or such other officer as he deems fit, to fix such rates as he may from time to time deem fit to sanction for the use, by landholders and other persons, of water the right to which vests in Government, [2] and in respect of which no rate is leviable under the Bombay Irrigation Act 1879 [2].

Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land-revenue.

56. *Land-revenue a paramount charge on land.*—Arrears of land-revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy [3] or alienated holding, together with all rights of the occupant [3] or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to

[1] As to the local modification of s. 54, see para. 4 of foot-note [2] on p. 196, *supra*.

[2—2] These words and figures were substituted for the original words by Bom. Act VII of 1879, s. 2.

[3] As to the local modification of the words "occupancy" and "occupant," see para 4 of foot-note [2] on p 196, *supra*.

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anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy [1] or alienated holding, [2] or may otherwise dispose of such occupancy [1] or alienated holding under rules or orders made in this behalf under section 214, [3] and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding. [3]

57. *Forfeited holding may be taken possession of and otherwise disposed of.*—It shall be lawful for the Collector, in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of the land embraced within such holding, and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

58. *Receipts to be granted by Revenue-officers*;—Every Revenue-officer receiving a payment of land-revenue shall give a written receipt for the same.

And by superior holders.—And every superior holder of an alienated village, or of an alienated share of a village, shall give a written receipt for every payment of rent or land-revenue made to him by an inferior holder, and every such receipt shall be countersigned by the village accountant, if there be any. [4]

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[1] As to the local modification of the words "occupancy" and "occupant" see para. 4 of foot-note [2] on p. 196, *supra*.

[2] Words repealed by Bom. Act VI of 1901, s. 6, are omitted.

[3—3] These words were added to s. 56 by Bom. Act VI of 1901, s. 6.

[4] The last fifteen words of s. 58 have been declared not to be in force in the Panch Mahals—see Act VII of 1885, s. 2.

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59. *Penalty for failure to grant receipts.*—Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

CHAPTER VI.

OF THE OCCUPATION OF UNALIENATED LAND AND THE RIGHTS OF OCCUPANTS.

Occupation.

[1] 60. *Permission required previous to taking up unoccupied land.*—Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar or Mahalkari.

[1] 61. *Penalties for unauthorized occupation of land.*—Any person who shall unauthorizedly occupy any land set apart for any special purpose, or any unoccupied land which has not been alienated, shall,

if the land which he unauthorizedly occupies forms part of an assessed survey-number, pay the assessment of the entire number for the whole period of his occupation, and,

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to the same purpose;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten

[1] As to the local repeal of ss. 60 to 63, see para. 4 of foot-note [2] on p. 196, *supra*.

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times the amount of assessment payable by him for one year if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules or orders made in this behalf under section 214, if he have appropriated it to any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for [1] a portion [1] of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop [2] raised on the land shall be liable to forfeiture, and any building or other construction [2] erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture.

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct.

[3] 62. *Occupancy-right to be paid for and liable to conditions.*—It shall be competent to the Collector, subject to such orders as may from time to time be made by the Governor in Council, to require the payment of a certain price for the occupancy, or to sell that right by auction, and to annex such conditions to the occupancy as may seem fit, before permission to occupy is granted under section 60.

Price to include price of trees.—The price of an occupancy shall include the price of the Government right to all trees not

[1=1] These words were substituted for the original words by Act XVI of 1895.

[2] Words repealed by Bom. Act VI of 1901, s. 7, are omitted.

[3] As to the local repeal of ss. 60 to 62, see para 4 of foot-note [3] on p. 196, *supra*.

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specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land-revenue.

[1] 63. *Occupancy of alluvial land which vests in Government.*—When it appears to the Collector that the occupancy of any alluvial land which vests, under any law for the time being in force, in Government, may, with due regard to the interests of the public revenue, be disposed of in perpetuity, he shall offer the prior right of occupancy thereof to the occupant, if any, of the bank or shore on which such alluvial land has formed.

The price of an occupancy so offered shall not exceed three times the annual assessment of the land of which the occupancy is offered.

If the said occupant shall refuse such occupancy, the Collector may dispose of the same under the last preceding section without any restrictions as to the price thereof.

[1] 64. *Temporary right to alluvial lands of small extent.*—When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use and occupation thereof, unless or until the area of the same exceeds half an acre, and also exceeds one-tenth of the area of his holding. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section.

"*Holding*" *defined.*—The word "holding" in this section shall be deemed to mean a survey-number, or any division of land on which a distinct or aggregate assessment has been fixed.

Occupants' Rights.

[1] 65. *Uses to which occupant of land for purposes of agriculture may put his land.*—An occupant of land appropriated for purposes of agriculture is entitled by himself, his

[1] As to the local repeal of ss. 63 to 65, see para. 4 of foot-note [2] on p. 196, *supra*.

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servants, tenants, agents or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient occupation for the purposes aforesaid.

Procedure if occupant wishes to apply land to other purpose.—But, if any occupant wishes to appropriate his holding or any part thereof to any other purpose, the Collector's permission shall in the first place be applied for by the registered occupant.

The Collector on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt, and after inquiry may either grant or refuse the same; but, if the applicant receive no answer within three months from the date of the said acknowledgment, the Collector's permission may be deemed to have been granted.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognised except it be made by the registered occupant.

Power to require fine in addition to special assessment.—When any such land is thus appropriated to any purpose unconnected with agriculture, it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

[1] 66. *Penalty for so appropriating land without permission.*—If any such land be so appropriated without the permission of the Collector being first obtained, or before the expiry of three months from the date of the aforesaid acknowledgment, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so appropriated, and from the entire

[1] As to the local repeal of ss. 66 and 67, see para. 4 of foot-note [2] on p. 196 *supra*.

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field or survey-number of which it may form a part, and the registered occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so appropriated, such fine as the Collector may, subject to the general orders of Government, direct.

Co-occupant or tenant responsible to registered occupant in damages.—Any co-occupant or any tenant of any occupant or any other person holding under or through an occupant, who shall, without the registered occupant's consent, appropriate any such land to any such purpose, and thereby render the said registered occupant liable to the penalties aforesaid shall be responsible to the said registered occupant in damages.

[1] 67. *Permission may be granted on terms.*—Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid in special cases on such terms [2] or condition [2] as may be agreed on between Government and the registeted occupant.

[3] 68. *Occupant's rights conditional.*—An occupant [4] is entitled to the use and occupation of his land for the period, if any, to which his occupancy [4] is limited, or if the period is unlimited, or a survey-settlement has been extended to the land in perpetuity, conditionally on the payment of the amounts due on account of the land-revenue for the same, according to the provisions of this Act or of any rules made under this Act, or of any other law for the time being in force, and on the fulfilment of any other terms [2] or conditions [2] lawfully annexed to his occupancy : [4]

[1] As to the local repeal of ss. 66 and 67, see para 4 of foot-note [2] on p. 196. *supra.*

[2-2] These words were inserted in ss. 67 and 68 by Bom. Act VI of 1901, s. 8 (1).

[3] As to the local repeal of s. 68, see para. 3 of foot-note [2] on p. 196, *supra.*

[4] As to the local modification of the words "occupant", "occupancy" and "registered occupant" see para. 4 of foot-note [2] on p. 196, *supra.*

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[1] *Proviso.*—Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to the orders of Government, prescribe, and in any such case the occupancy shall, whether a survey-settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

69. *Reservation of Government-right to mines.*—The right of Government to mines and mineral-products in all unalienated land is and is hereby declared to be expressly reserved :

Proviso.—Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant [2] of such land in respect of such mines or mineral-products.

70. *Decree or order of competent Court to be given effect to.*—If by a decree or order of a competent Court it shall be adjudged that the occupant [2] is an inferior holder under another person or that the occupancy [2] is vested in another person, or if, in the execution of such a decree or order, the interest of the occupant [2] in the land have been transferred by sale or otherwise to another person, such other person shall, on producing a certificate copy of the decree or order, or the Court's certificate of the sale or other transfer, be deemed to be the occupant [2] and be dealt with accordingly, and, on written application being made to the Collector for the purpose, such change shall be made in the entry of the registered occupant's [2] name as the circumstances require :

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[1] This proviso to s. 68 was added by Bom. Act VI of 1901, s. 8 (2).

[2] As to the local modification of the words "occupant", "occupancy" and "registered occupant", see para. 4 of foot-note [2] on p. 196, *supra*.

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[1] *Proviso.*—Provided that in any case where the occupancy or interest of the occupant in the land is not transferrable without the previous sanction of the Collector and such sanction has not been granted to the transfer which has been made or ordered by the Court or on which the Court's decree or order is founded,

(*a*) such occupancy or interest shall not be liable to the process of any Court, and such transfer shall be null and void, and

(*b*) the Court, on receipt of a certificate under the hand and seal of the Collecfor, to the effect that any such occupancy or interest is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such occupancy or interest in the land.

71. *Name of heir to be registered when registered occupant dies.*—On the death of a registered occupant [2] the Collector shall cause the name of his eldest son, or other person appearing to be his heir, or the principal of his heirs, to be registered in his stead, and the said heir shall thereafter be deemed the registered occupant [2] and, subject to the provisions of the last preceding section, shall be dealt with accordingly.

When entry to be amended.—But, if at any time any person shall, by production of a certificate of heirship or of a decree or order of a competent Court, satisfy the Collector that he is entitled to be the registered occupant [2] in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the Government records to be amended accordingly.

[3] 72. *Intestate occupancy or holding to be sold.*—If an occupant [2] who is either a Hindu, a Muhammadan or a

[1] This proviso to s. 70 was added by Bom. Act VI of 1901, s. 9.

[2] As to the local modification of the words "occupant", "occupancy" and "registered occupant", see para. 4 of foot-note [2] on p. 196, *supra*.

[3] As to the local repeal of s. 72, see para. 3 of foot-note [2] on p. 196, *supra*.

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Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy [1] by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land-revenue, and the law at the time in force concerning property left by Hindus, Muhammadans or Buddhists, dying intestate and without known heirs, shall not be deemed to apply to the said occupancy [1], but only to the proceeds of such sale after deducting all arrears of land-revenue due by the deceased to Government and all expenses of the said sale.

[2] 73. *Right of occupancy to be transferable and heritable.*—[3] The right of occupancy [1] shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the occupancy, [1] and save as otherwise prescribed by law, be deemed an heritable and transferable property.

[4] 73A. (1) *Power to restrict right of transfer.*—Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by Notification published before the introduction therein of an original survey-settlement under section 103, declare the provisions of this section applicable, the occupancy or interest of the occupant in the land shall not after the date of such Notification be transferable without the previous sanction of the Collector.

(2) Government may, by Notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section

Relinquishment of Occupancy [1].

[2] 74. *Occupant may relinquish occupancy.*—An occu-

[1] As to the local modification of the words "occupants," "occupancy" and "registered occupants," see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local repeal of ss. 73 and 74, see para. 3 of foot-note [2] on p. 196, *supra*.

[3] This section was substituted for the original s. 73 by Bom. Act VI of 1901, s. 10.

[4] S. 73A was inserted by Bom. Act VI of 1901, s. 11.

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pant [1] may, by giving written notice to the Mamlatdar or Mahalkari, relinquish his occupancy [1], either absolutely or in favour of a specified person : provided that such relinquishment apply to the entire occupancy [1] or to whole survey-numbers, or recognized shares of survey-numbers.

An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the thirty-first March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council.

A relinquishment in favour of a specified person may be made at any time.

When there are more occupants [1] than one, the notice of relinquishment must be given by the registered occupant [1] ; and the person, if any, in whose favour an occupancy [2] is relinquished, or, if such occupancy [1] is relinquished in favour of more person than one, the principal of such persons, must enter into a written agreement to become the registered occupant [1], and his name shall thereupon be substituted in the records for that of the previous registered occupant [1].

75. *Relinquishment of lands paying lump assessment.*— When a lump assessment is fixed upon several fields or survey-numbers in the aggregate, it shall not be lawful for the occupant [3] to relinquish as aforesaid any one or more of such fields or survey-numbers except with the previous consent of the Collector.

It shall be competent to the Collector to grant or refuse his consent ; if he grants it, the occupancy [1] shall be divided, and the Collector shall determine the proportional amount of land-revenue to be paid by each portion of it ; and the original occupant [1], and the person, if any, in whose favour he relin-

[1] As to the local modification of the words "occupant," "occupancy" and "registered occupant," see para. 4 of foot-note [2] on p. 196, *supra*.

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quishes a portion of his occupancy [1], shall be held liable for the revenue severally assessed on their portions.

[2] 76. *Application of sections 74, 75.*—The provisions of the two last sections shall apply, as far as may be, to the holders of alienated land : Provided that—

(*a*) *Relinquishment of land described in paragraph 1 of section 49* ;—it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49, until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section ; and that,

(*b*) *Relinquishment of land described in section 51.*—if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

77. *Right of way to relinquished land.*—If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.

78. *Sections 75 and 76 not to affect*—Nothing in sections 75 and 76 shall affect—

(*a*) *responsibility of share in certain village* ; the responsibility of any share in a village for the land-revenue of which the sharers are all, according to law or the custom of the village jointly responsible, or

(*b*) *validity of lease from Government.*—the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government.

[1] As to the local modification of the words "occupant," "occupancy" and "registered occupant," see para 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local repeal of s. 76, see para. 4 of foot-note [2] on p. 196, *supra*.

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79 *Occupant to continue liable for demands until occupancy relinquished.*—The registered occupant [1] or the holder of alienated land shall continue liable for the land-revenue due on the occupancy [1] or alienated holding and for all other lawful demands of Government in respect of same, until such time as the occupancy [1] or alienated holding is relinquished or transferred, under any of the provisions of this Act, to the name of any other person ; and the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy [1] or alienated holding has been assigned, unless the transfer has been recorded in the revenue-records in accordance with the foregoing provisions.

[2] 79*A* *Summary eviction of person unauthorizedly occupying land.*—Any person unauthorizedly occupying, or wrongfully in possession of, any land

(*a*) to the use and occupation of which he has ceased to be entitled under any of the provisions of this Act, or

(*b*) of which the occupancy right is not transferable without previous sanction under section 73A or by virtue of any condition lawfully annexed to the occupancy under the provisions of section 62, 67 or 68,

may be summarily evicted by the Collector.

Remedies against Forfeiture of Occupancies.

80. *Right of person other than occupant to pay land-revenue to prevent forfeiture.*—In order to prevent the forfeiture of an occupancy [1] under the provisions of section 56 or of any other law for the time being in force, through non-payment by the registered occupant [1] of the land-revenue due on account

[1] As to the local modification of the words "occupancy," "occupant" and "registered occupant," see para. 4 of foot-note [2] on p. 196, *supra*.

[2] Section 79A was inserted by Bom. Act VI of 1901, s. 12.

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thereof, it shall be lawful for any co-occupant, tenant, mortgagee or other person interested in the continuance of the occupancy [1] to pay on behalf of such registered occupant [1] all sums due on account of land-revenue, and for the Collector to receive the same.

Collector may assist such persons in recovering the revenue from other parties liable there for.—And in any such case the Collector may give to the person who has paid the land-revenue as aforesaid such aid for the recovery of the proportional amounts which he may consider to be properly payable by other persons in occupation of parts of a field or survey-number as he might legally have given had the persons so paying been the registered occupants [1]:

Proviso.—Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

81. *When Collector may make co-occupant the registered occupant, instead of selling occupancy to realize land-revenue.*—If it shall appear to the Collector that a registered occupant [1] has failed to pay land-revenue, and has thus incurred forfeiture with a view to injure or defraud his co-occupants or other persons interested in the continuance of the occupancy [1], or that a sale [2] or other disposal [2] of the occupancy [1] will operate unfairly to the prejudice of such co-occupants or other persons, it shall be lawful for him, instead of selling [2] or otherwise disposing of [2] the occupancy [1], to forfeit only the said registered occupant's [1] interest in the same and to substitute the name of any such co-occupant or other person as registered occupant [1] thereof in the revenue-records, on his payment of all sums due on

[1] As to the local modification of the words "occupancy" and "registered occupant," see para. 4 of foot-note [2] on p. 196, *supra*.

[1-2] These words were inserted in s. 81 by Bom. Act VI of 1901, s. 13.

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account of land-revenue for the occupancy [1]; and such person so becoming the registered occupant [1] shall have the rights and remedies with respect to all other persons in occupation provided for by section 86.

Suspension of certain Provisions of this Chapter.

[2] 82. *Power to suspend operation of section 60 or 74.*—It shall be lawful for the Governor in Council, by notification in the *Bombay Government Gazette*, from time to time,—

(*a*) to suspend the operation of section 60 or 74, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(*b*) to cancel any such notification.

During the period for which any notification under the above clause (*a*) is in force within any local area, shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

CHAPTER VII.

Of Superior and Inferior Holders.

Tenants' Rights.

83. *Amount of rent payable by tenant.*—A person placed, as tenant, in possession of land by another, or in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be

[1] As to local modification of the words "occupancy" and "registered occupant, see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local repeal of s. 82, see para. 4 of foot-note [2] on p. 196, *supra*.

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presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and reasonable.

Duration of tenancy.—And where, by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

Presumption as to tenure.—And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, received, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Saving clause.—Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage or otherwise) to enhance the rent payable, or services renderable, by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

84. *Termination of annual tenancy.*—An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the thirty-first March.

Notice of termination of tenancy to be given by landlord to tenant or vice versa.—An annual tenancy shall require for its termination a notice given in writting by the landlord to the tenant or by the tenant to the landlord, at least three

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months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E or to the like effect.

[1] 85. *Superior holders' dues by whom to be collected.*—It shall be incumbent on every superior holder of an alienated village, and on every superior holder of an alienated share of a village in which there exists an hereditary patel and village-accountant, to receive his dues on account of rent or land-revenue from the inferior holders through the said village-officers.

Any such superior holder demanding or receiving payment from any inferior holder of any rent or land-revenue otherwise than through the said village-officers shall, on conviction in a summary inquiry before the Collector, forefeit to Government three times the amount of the sum so demanded or received.

Every such hereditary patel or accountant shall be bound to receive an account to the said superior holder for all sums paid to or recovered by him, on account of the said superior holder; and, on his or their failure to do the same, the superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

Recovery of Superior Holders' Dues.

86. *Superior holders entitled to assistance in recovery of dues from inferior holders, etc.*—Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land-revenue payable to them by inferior holders, or by co-sharers in their holdings, under the same rules, except that contained in section 137, and in the same manner, as prescribed in Chapter XI [2] for the realization of land-revenue by Government:

[1] S. 85 has been declared not to be in force in the Panch Mahals—see Act VII of 1885, s. 2. As to the local repeal of the section, see para. 4 of foot-note [2] on p. 196, *supra*.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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Application for assistance when to be made.—Provided that such application be made within the revenue-year or within the year of tenancy in which the said rent or land-revenue became payable.

87. *Collector how to proceed on such application.*—On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land-revenue as appears to him upon the evidence before him to be lawfully due.

Assistance may be refused or granted in part.—But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for or, if the land to which the dispute relates has been assessed, under the provisions of Chapter VIII [1] or any survey-settlement confirmed by section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Civil suit not barred.—Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

Grants of special Powers to Holders of alienated Lands.

[2] 88. *Governor in Council may, by commission, confer on holders of alienated lands power*—It shall be lawful for the Governor in Council at any time to issue a commission to any

[1] Words repealed by Act III of 1886 are omitted.

[2] As to the local modification of ss. 88 and 89, see para. 4 of footnote [2] on p. 196, *supra*.

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holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands specified in such commission (namely) :—

(*a*) *to demand security for land-revenue*; to demand security for the payment of the land-revenue or rent due to him, and, if the same be not furnished to take such precautions as the Collector is authorized to take under sections 141 to 143;

(*b*) *to attach defaulter's property*; to attach the property of persons making default in the payment of such land-revenue or rent, as aforesaid;

(*c*) *to fix time at, and instalments in, which revenue due shall be paid*; to fix from time to time the times at which, and the instalments in which, the land-revenue or rent due to him shall be payable;

(*d*) *to exercise Collector's power*; to exercise the powers of a Collector under sections 65 and 66;

(*e*) *to receive notices of relinquishment*; to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(*f*) *to arrange for repair of boundary-marks.*—to take measures for the maintenance and repair of boundary-marks in the manner provided for Survey-officers in section 122:

Proviso. Provided that the powers contemplated in clauses (*c*) to (*f*) shall be conferred only on holders of lands to which a survey-settlement has been extended under the provisions of section 216.

[1] 89. *Form of such commission.*—Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of Government; and a commission may, if the Governor in Council see fit, be issued to

[1] As to the local modification of ss. 88 and 89, see para. 4 of footnote [·] on p. 196, *supra*.

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one or more agents of a holder of alienated lands as well as to the holder in person.

90. *Reference to be made by holder of commission to Collector.*—If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165-186.

But if the holder of the commission is invested, under Regulation XIII of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees the sale shall be conducted by him and not by the Collector and his subordinates.

91. *When compulsory process shall cease.*—All compulsory process shall cease—

on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing, either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

Penalty for continuing compulsory process.—And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made or tendered as aforesaid, or after the furnishing of such security as aforesaid, or after tender thereof, shall be liable, on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

92. *Arrears to which power under commission to extend.*—The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or

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rent of the current year and of the year next immediately preceding, but not to that of former years.

93. *Holder of commission not to enforce unusual or excessive demand.*—The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid previously to the date of such demand, or of what he may have contracted in writing to pay.

In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

Penalty for so doing.—The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforcable shall be entitled to recover, on conviction of the holder of the commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land-revenue.

[1] 94. *Holder of commission may establish right to enhanced rent in Civil Court.*—Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

[1] As to the local modification of s. 94, see para. 4 of foot-note [1] on p. 196, *supra*.

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CHAPTER VIII.

Of Survey-settlements and the Partition of Estates.

95. *Power to introduce revenue servey into any part of Presidency.*—It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose, and such survey shall be called a revenue-survey.

Such survey may extend to the lands of any village, town or city generally, or to such land only as the Governor in Council may direct, and, subject to the orders of the Governor in Council, it shall be lawful for the officers conducting any such survey to except from the survey-settlement any land to which it may not seem expedient that such settlement should be applied.

Control of revenue-survey.—The control of every such revenue-survey shall vest in, and be exercised by, the Governor in Council.

96. *Survey-officer may require, by general notice or by summons, suitable service from holders of land, etc.*—It shall be lawful for the Survey-officer deputed to conduct or take part in any such survey to require, by general notice or by summons, the attendance of holders of lands and of all persons interested therein, in person or by legally constituted agent duly instructed and able to answer all material questions and the presence of talúka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices, and to require from them such assistance in the operations of the survey and such service in connection therewith as may not be inconsistent with the position of the individual so called on.

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97. *Assistance to be given by holders and others in measurement, or classification of lands.*—It shall be lawful for the Survey-officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the servey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this or other similar object incidental to survey-operations, it shall be lawful to assess the cost thereof, with all contingent expenses, on the lands surveyed, for collection as a revenue-demand.

98. *Survey-numbers not to be of less extent than minimum fixed.*—Except as hereinafter provided, no survey-number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government.

A record of the minima so fixed shall be kept in the Mamlatdar's office in each taluqa, and shall be open to the inspection of the public at reasonable times.

Exception.—These provisions shall not apply to survey-numbers which have already been made of less extent than the minima so fixed, or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance in this behalf; and any survey-number separately recognised in the survey-records shall be deemed to have been authorizedly made, whatever be its extent.

99. *Provisions applicable to recognized shares of survey-numbers.*—Recognized shares of survey-numbers shall be subject to the same provisions of this Act as are applicable to entire survey-numbers, except—

(*a*) that it shall not be obligatory to demarcate such shares separately, and

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[1] (*b*) that if any such share is relinquished by the occupant [2] absolutely under the provisions of section 74, the occupancy [2] thereof shall be offered to the occupants [2] of the other shares of the same survey-number in order of the [3] relative largeness of the amounts payable by them respectively on account of the assessment of their said shares, and that, in the event of their all refusing the occupancy [2] of the said share, the assessment thereon shall, until such time as the entire number is relinquished by them, be levied from them in proportion to the amounts of assessment payable by them as aforesaid.

100. *Officer in charge of survey to fix assessment.*—Subject to rules or orders made in this behalf, under section 214, the officer in charge of a survey shall have authority to fix the assessment for land-revenue at his discretion on all lands within the local operation of an order made under section 95, not wholly exempt from land-revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

Regard to be had to proviso to section 52.—In fixing such assessment, regard shall be had to the requirements of the proviso to section 52:

Proviso.—But nothing in this section shall be deemed to prevent the Survey-officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land-revenue or on lands especially excepted under section 95 from the survey-settlement, or from dividing all such lands to which the survey extends into survey-numbers.

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[1] As to the local repeal of s. 99, cl. (*b*), see para. 3 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of the words "occupant" and "occupancy", see para. 4 of foot-note [2] on p. 196, *supra*.

[3] "The" was substituted for "their" by Act XVI of 1895.

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101. *Assessment may be on land, or on means of irrigation, etc.*—The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is levied [1] under section 55 [2] or under the Bombay Irrigation Act, 1879 [2], or in any other manner whatsoever that may be sanctioned by Government.

102. *Assessments not leviable without sanction of Government. But may be fixed, with or without modification, for term of years.*—The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modification which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone and not exceeding ninety-nine in the case of all other lands.

[3] 103. *Introduction of survey-settlement how made.*—When in the case of lands used for the purposes of agriculture alone, Government shall have sanctioned the assessments fixed by the officer in charge of the survey, it shall be the duty of the said officer, or of the Collector or Assistant or Deputy Collector, publicly to announce, or to cause to be announced, the assessment fixed on each survey-number.

The said officer, or the Collector or Assistant or Deputy Collector shall, at a reasonable time beforehand, cause public

[1] "Levied" was substituted for "leviable" by Bom. Act VII of 1879, s. 2.

[2-2] This reference was inserted by Bom. Act VII of 1879, s. 2.

[3] As to the local modification of s. 103, see para. 3 of foot-note [2] on p. 196, *supra*.

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notice to be given, in such manner as he shall deem fit, of the time at or about which the assessments will be announced as aforesaid.

If the holder or other person interested in any holding do not appear in person or by agent, he shall be subject, nevertheless, to the same liabilities as if he had attended.

When the assessments have been announced in the manner provided in the first clause of this section, the survey-settlement shall be held to have been introduced.

104. *Excess assessment not to be levied in year in which survey-settlement is introduced.*—In the year in the course of which a survey-settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

[1] *nor in following year if number resigned that year.*—In the year next following that in which any [2] original or [2] revised survey-settlement has been introduced, any occupant [3] who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey-numbers held by him shall, on resigning such number in the manner prescribed by sections 74 and 76 on or before the thirty-first March receive a remission of the increase to imposed.

105. *Fixing of assessment under section 102 limited to ordinary land-revenue.*—The fixing of the assessment under the provisions of section 102 shall be strictly limited to the assessment of the ordinary land-revenue, and shall not operate

[1] As to the local repeal of s. 104, para. 2, see para. 3 of foot-note [2] on p. 196, *supra*.

[2-2] These words were inserted by Act XVI of 1895.

[3] As to the local modification of the word "occupant", see para. 4 of foot-note [2] on p. 196, *supra*.

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as a bar to the levy of any cess which it shall be lawful for the Governor in Council to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village and district roads, bridges, tanks, wells, accommodation for travellers and the like, or of any rate for the use of water which may be imposed under the provisions of section 55 [1] or of the Bombay Irrigation Act, 1879 [1].

106. *Government may direct fresh survey and revision of assessment.*—It shall be lawful for the Governor in Council to direct, at any time, a fresh revenue-survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102:

[2] Provided that, when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final, no such classification shall be again made with a view to the revision of the assessment of such area.

[3] 107. *Revision of assessment.*—In revising assessments of land-revenue regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture: Provided that, if any improvement has been effected in any land during the currency of any previous settlement made under this Act, or under Bombay Act I of 1865 [4] by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating

[1-1] This reference was added by Bom. Act VII of 1879, s. 2.

[2] This proviso was substituted for the original clause by Bom. Act IV of 1886, s. 1.

[3] This section was substituted for the original s. 107 by Bom. Act IV of 1886, s. 2.

[4] Bom. Act I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act.

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the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof.

108. *Preparation of statistical and fiscal records.*—It shall be the duty of the Survey-officer, on the occasion of making or revising a settlement of land-revenue, to prepare a register, to be called "the settlement-register" showing the area and assessment of each survey-number, together with the name of the registered occupant [1] of such survey-number and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

[2] 109. *Officers to correct clerical and admitted errors in settlement-register, and inquire into and pass orders on applications for mutation of names.*—The Survey-officer, or, if the survey-settlement have been introduced under the provisions of section 103 by the Collector or Assistant or Deputy Collector, the Collector or Assistant or Deputy Collector, shall at any time correct or cause to be corrected any clerical errors, and any errors which the parties interested admit to have been made in the settlement-register ;

he shall also receive and enquire into all applications made to him at any time within two years after the introduction of the survey-settlement for the correction of any wrong entry of a registered occupant's name in the said register, and if satisfied that an error has been made, whether through fraud, collusion, oversight or otherwise, shall correct or cause the same to be corrected, notwithstanding that all the parties interested do not admit the error ;

[1] but he shall not receive any such application at any time after two years from the date of the introduction of the survey-

[1] As to the local modification of the words "registered occupant", see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local repeal of ss. 109 and 110, see para. 4 of foot-note [2] on p. 196, *supra*.

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settlement, unless good cause be shown to his satisfaction for the delay in making such application, and no such correction of the said register shall be made in consequence of any application made after the said period of two years, except with the previous sanction of Government.

[1] 110. *Collector to keep survey-records and frame village-records in accordance therewith.*—The Collector shall keep the settlement-register and such other records prepared by the Survey-officer as Government shall direct, and shall cause the village-records and accounts to be prepared in accordance therewith;

and to register changes, etc.—he shall not make any alterations or corrections in the settlement-register, but shall cause to be registered in the village-records and accounts all changes that may take place, and anything that may affect any of the rights or interests therein recorded.

[2] 111. *Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.*—In the event of any alienated village or estate coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof at rates determined by means of a survey-settlement or at such other fixed rates as he may deem to be reasonable, and to sell the occupancy of unoccupied lands by auction, and otherwise to conduct the revenue management thereof under the rules for the management to unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers: Provided, however, that any written agreements relating to the land, made by the superior holder

[1] As to the local repeal of ss. 109 and 110 see para 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of ss. 111 and 113, see para, 4 of foot-note [2] on p. 196, *supra*.

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of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

[1] 112. *Maintenance of existing settlements of land-revenue.*—Existing survey-settlements of land-revenue made, approved and confirmed under the authority of the Governor in Council shall be, and are hereby declared to be, in force subject to the provisions of this Act.

Partition.

[2] 113. *Partition estate paying revenue to Government.*—The following rules shall be enforced at the partition of any estate paying land-revenue to Government (namely) :—

(1) The estate shall be divided as far as possible according to survey-numbers without sub-dividing any number; but, if the partition cannot be completely effected without sub-dividing a number, such sub-division may be made by the Collector, subject to the provisions of section 98 :

(2) any number, or sub-division of a number, which may remain over after the partition has been carried out, as far as possible, according to the last rule, and which is incapable of sub-division or of further sub-division owing to the provisions of section 98, shall be made over to one of the sharers in consideration of his paying to the other sharers the value in money of their shares in the same, or shall be sold and the proceeds divided amongst all the sharers, or otherwise disposed of as the Collector thinks fit ;

(3) the expenses necessarily and properly incurred in making such partition shall be recoverable as a revenue-demand in such proportions as the Collector thinks fit from the sharers at whose request it is made, or from the persons interested in such partition.

[1] As to the local repeal of s. 112, see para. 3 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of ss. 111 and 113, see para. 4 of foot-note [2] on p. 196, *supra*.

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114. *Partition of certain estates by Collector on application by co-sharers.*—Whenever any one or more co-sharers in a khoti estate into which a revenue-survey has been introduced [1], or in a talukdari estate [1], consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, subject to the rules contained in the last preceding section, to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such share to the co-sharers :

Provided that no such partition shall be made, unless—

(*a*) all the co-sharers are agreed as to the extent of their respective rights in the estate, and

(*b*) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered under rule (3) of the last preceding section from all the co-sharers in the estate divided.

115. *Sub-division of numbers at time of revision of survey.*—At the time of a revision of survey, it shall be in the discretion of the officer in charge of the survey, subject to the provisions of section 98, and to any departmental rules or orders in this behalf at the time in force, to sub-divide any survey number into two or more distinct numbers, and to enter the names and liabilities of the persons whom he shall deem entitled to be recognized as registered occupants [2] of such sub-divisions in the settlement-register separately.

[1—1] These words are repealed in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals by Bom. Act VI of 1888, s 3.

[2] As to the local modification of the words "registered occupants," see para. 4 of foot-note [2] on p. 196, *supra*.

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[1] 116. *Separate demarcation of land appropriated under section 65 or 67.*—When any portion of cultivable land is appropriated under the provisions of section 65 or 67 for any non-agricultural purpose, the portion so appropriated may, with the sanction of the Collector, be demarcated, and made into a separate number at any time notwithstanding the provisions of section 98.

117. *Bombay Act V of 1862 not affected.*—Nothing in section 113, 115 or 116 shall affect the provisions of Bombay Act V of 1862.

CHAPTER IX.

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS.

[2] 118. *Determination of village boundaries.*—The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined, by Survey-officers, or by such other officers as may be nominated by Government for the purpose, who shall be guided by the following rules:—

Rule 1.—*Village-boundaries may be settled by agreement.*—When the patels and other village-officers of any two or more adjoining villages, and in the case of an alienated village the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon.

[1] As to the local repeal of s. 116, see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of s. 118, see para. 3 of foot-note [2] on p. 196, *supra*.

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And any village-boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation or any other illegal means.

Rule 2.—Procedure in case of disagreement or dispute.—If the patels and other village-officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a Survey-officer shall, unless the officer making it be the Superintendent of Survey, be subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

β. [1] 119. *Determination of field-boundaries.*—If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village-officers then present it may be laid down as pointed out by the holder or person in occupation, and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the Survey-officer according to the village-records, and according to occupation as ascertained from the village-officers and the holders of adjoining lands, or on such other evidence or information as the Survey-officer may be able to procure.

[1] As to the local modification of s. 119, see para. 3 of foot-note [2] on p. 196, *supra*.

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(2) If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time after the survey-records have been handed over to the Collector, a dispute arise concerning the boundary of any survey-number, it shall be determined by the Collector, who shall be guided in the case of survey-numbers by the survey-records, if they afford satisfactory evidence of the boundary previously fixed, and, if not, by such other evidence as he may be able to procure.

120. *Settlement of boundary disputes by arbitration.*— If the several parties concerned in a boundary-dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the boundary shall require the said parties to nominate a committee of not less than three persons, within a specified time, and, if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or, if the said officer be a Survey-officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final :

When award may be remitted for reconsideration.— Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in section 520 of the Code of Civil Procedure [1].

If arbitration fail, Survey-officer to settle dispute.— If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a Survey-officer lower in rank than a Superintendent

[2] This reference to s. 520 of Act X of 1877 should now be read as applying to s. 520 of Act XIV of 1882—see s. 3 of the latter Act.

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of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

121. *Effect of settlement of boundary.*—The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative :—

(*a*) of the proper position of the boundary-line or boundary-marks, and

(*b*) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain or not to appertain, to their respective holdings.

Boundary-marks.

122. *Construction and repair of boundary-marks of villages and survey-numbers.*—It shall be lawful for any Survey-officer, authorized by a Superintendent of Survey or Settlement-officer, to [1] specify, or cause to be constructed, laid out, maintained or repaired [1], boundary-marks of villages or survey-numbers, whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

Requisition on landholders to erect or repair boundary marks.—Such officer may require landholders to construct [2] lay out, maintain [2] or repair their boundary-marks, by a notification which shall be posted in the chauri or other public place in the village, to which the lands under survey belong, directing the holders of survey-numbers to construct [2] lay out, maintain [2] or repair, within a specified time, the boundary-marks of their respective survey-numbers, and, on their failure to comply with the requisition so made, the Survey-officer shall then construct, [2] lay out [2] or repair them, and assess all charges incurred thereby as hereinbefore provided.

[1-1] These words were substituted for the original words by Bom. Act VI of 1901, s. 14 (*1*).

[2-2] These words were inserted in the second para. of s. 122 by Bom. Act VI of 1901, s. 14 (*2*).

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General notification to be sufficient notice of requisition.—A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey-numbers within the limits of the lands to which the survey extends.

[1] *Description of boundary-marks.*—The boundary-marks shall be of such description, and shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and materials as may, subject to rules or orders made in this behalf under section 214, be determined by the Superintendent of Survey, according to the requirements of soil and climate.

[2] 123. *Responsibility for maintenance of boundary-marks.*—Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the Revenue-officers in cases of alteration, removal or disrepair. It shall be the duty of the village-officers and servants to prevent the destruction or unauthorized alteration of the village-boundary-marks.

124. *Collector to have charge of boundary-marks after introduction of survey-settlement.*—When the survey-settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the Collector, and it shall be his duty to take measures for their [3] construction, laying out [3], maintenance and repair, and for this purpose the powers conferred on Survey-officers by section 122 shall vest in him.

[1] This para was substituted for the original para. by Bom. Act VI of 1901, s. 14 (3).

[2] As to the local modification of s. 123, see para. 3 of foot-note [2] on p. 196, *supra*.

[3—3] These words were inserted in s. 124 by Bom. Act VI of 1901, s. 15.

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125, *Penalty for injuring boundary-marks.*—Any person convicted, after a summary inquiry before the Collector, or before a Survey-officer, Mamlatdar or Mahalkari, of wilfully erasing, removing or injuring a boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed or injured.

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

CHAPTER X.

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS AND CITIES.

Fixing of Sites.

126. *Limits of sites of villages, towns and cities how fixed.*—It shall be lawful for the Collector or for a Survey-officer acting under the general or special orders of Government to determine what lands are included within the site of any village, town or city, and to fix, and from time to time to vary, the limits of the same, respect being had to all subsisting rights of landholders.

Exemption from Land-revenue.

[1] 127. *Act XI of 1852 and Bombay Acts II and VII of 1863 how far applicable to lands in such sites.*—Act XI of 1852, and Bombay Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868, which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said

[1] As to the local repeal of ss. 127 and 128, see para. 4 of foot-note [2] on p. 196, *supra*.

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Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

[1] 128. *Existing exemption when continued in case of certain lands.*—The existing exemption from payment of land-revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 [2] shall be continued—

1st, if such lands are situated in any town or city where there has been in former years a survey which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land-revenue;

2nd, if such lands have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the application of Bombay Act I of 1865 [3] or IV of 1868 [2] to such town or city;

3rd, if such lands, for whatever period held, have been held wholly or partially exempt from payment of land-revenue under a deed of grant or of confirmation issued by an officer whom Government recognise as having been competent to issue such deed.

[4] 129. *Right to exemption determined by Collector.*—Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

[4] 130. *Occupancy price payable in addition to assessment in certain cases.*—In town and cities to which section

[1] As to the local repeal of ss. 127 and 128, see para. 4 of foot-note [2] on p. 196, *supra*.

[2] Bom. Act IV of 1868 is repealed by s. 2 of this Act.

[3] Bom. Act I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act.

[4] As to the local repeal of ss. 129 to 132 see para. 4 of foot-note [2] on p. 196, *supra*.

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128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorisedly occupied for a period commencing less than two years before Bombay Act I of 1865 [1] or IV of 1868 [2] was applied to the town or city in which the said lands are situate, shall be liable to pay the price of the occupancy of the said land in addition to the land-revenue assessed thereupon.

The said occupancy-price shall be determined according to the provisions of section 62.

Miscellaneous.

[ ] 131. *Survey of land in such sites how conducted.*—If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act:

Proviso.—Provided that nothing contained in section 96, 97, 101, 103, 104 or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

[3] 132. *In certain cases survey-fee to be charged.*—When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey-fee to

[1] Bom. Act I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act.

[2] Bom. Act IV of 1868 is repealed by s. 2 of this Act.

[3] As to the local repeal of ss. 129 to 132, see para. 4 of foot-note [2] on p. 196, *supra*.

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be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government: Provided that the said fee shall in no case exceed rupees five for each survey-number.

The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

In any town or city in which Bombay Act IV of 1868 [1] was in force before the passing of this Act, a similar public notice shall be issued by the Collector within six months after the passing of this Act [2].

[3] 133. *Sanad to be granted without extra charge.*—Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, specifying by plan and description the extent and condition of his holding:

Proviso.—Provided that, if such holder do not apply for, such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

[3] 134. *Assessment of lands hitherto used for purpose of agriculture only, appropriated to other purposes.*—If any land within the site of any village, town or city, hitherto ordinarily

[1] Bom. Act IV of 1868 is repealed by s. 2 of this Act.

[2] Portion repealed by Act XVI of 1895 is omitted.

[3] As to the local repeal of ss. 133 to 135 see para. 4 of foot-note [2] at p. 196, *supra*.

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used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provision of any law for the time being in force, be appropriated to any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

[1] 135. *Limitation of certain suits.*—Any suit instituted in a Civil Court to set aside any order passed by the Collector under section 37 or 129, in respect of any land situated within the site of a village, town or city, shall be dismissed, although limitation has not been set up as a defence, if it has not been instituted within one year from the date of the order.

CHAPTER XI.

OF THE REALIZATION OF THE LAND-REVENUE AND OTHER REVENUE-DEMANDS.

Responsibility for Land-revenue.

[2] 136. *Primary responsibility.*—The registered occupant shall be primarily responsible to Government for the land-revenue of unalienated land, and the superior holder shall be primarily responsible to Government for the land-revenue of alienated land.

Recovery of land-revenue if person primarily responsible fails to pay it.—On failure of the person primarily responsible to Government for the land-revenue to pay the same according to the rules legally prescibed in that behalf, it may be recovered from the co-occupant of unalienated land or the co-sharer of alienated land, or in either case from the inferior holder or person in actual occupation of the land.

[1] As to the local repeal of ss. 133 to 135, see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of s. 136, see para. 3 of foot-note [2] on p. 196, *supra*. As to the local repeal of the section, see para. 4 of the same foot-note.

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Credit allowed to inferior holder for recoveries made from him—When land-revenue is recovered from any such co-occupant, co-sharer, inferior holder or other person, he shall be allowed credit for all payments which he may have made to the registered occupant or superior holder, or to his landlord, at or after the prescribed or usual time of such payments, and he shall be entitled to credit in account with the registered occupant or superior holder or with his landlord for the amount recovered from him.

Priority of Government Claim for Land-revenue.

137. *Claims of Government to have precedence over all others.*—The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand or claims whatsoever, whether in respect of mortgage, judgment-decree, execution or attachment, or otherwise howsoever, against any land or the holder thereof.

138. *Liability of crop for revenue of land.*—In all cases the land-revenue for the current year, of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

Land-revenue when Leviable.

139. *Land-revenue may be levied at any time during the revenue-year.*—The land-revenue shall be leviable on or at any time after the first day of the revenue-year for which it is due; but except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

Precautionary Measures for the Security of the Land-revenue.

140. *Removal of crop which has been sold, etc. may be prevented until revenue paid.*—When the crop of any land

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or any portion of the same is sold, mortgaged or otherwise disposed of, whether by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the current year's revenue of the said land has been paid, whether the date fixed for the payment of the same, under the provisions hereinafter contained, has yet arrived or not.

But in no case shall a crop, or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than one year's revenue.

141. *To secure land revenue Collector may prevent reaping of crop, or*—It shall be lawful for the Collector, in order to secure the payment of the land-revenue by enforcement of the lien of Government on the crop—

(*a*) to require that the crop growing on any land liable to the payment of land-revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt;

(*b*) *Removal thereof, or*—to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid;

(*c*) *Place watchmen over it*.—To cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land-revenue due in respect of the land to which such crop belongs.

142. *Collector's orders under last section how made known*.—The Collector's orders under either clause (*a*) or clause

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(*b*) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chauri or some other public building in the village.

If it be to individual holders, a notice thereof shall be served on each holder concerned.

Penalty for disobedience of order.—Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code abet the disobedience of any such order shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land-revenue due on the land to which the crop belongs in respect of which the offence is committed.

143. *Reaping, etc., not to be unduly deferred. Crop when to be released.*—The Collector shall defer the reaping of the crop, nor prolong its deposit, unduly, so as to damage the produce; and, if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter, or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal costs, and release the rest.

144. *Temporary attachment and management of village or share of village.*—If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land-revenue payable in respect of any

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holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Powers of manager, and disposal of surplus profits.—The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the land-revenue and the cost of introduction of a revenue-survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector, subject to the orders of the Commissioner, may direct.

145. *Precautionary measures to be relinquished on security being furnished.*—The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible, shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which, it is payable under the provisions hereinafter contained.

Regulation of Payment of Land-revenue.

146. *Government to determine dates, etc., on which land-revenue shall be payable.*—Land-revenue, except when it is recovered under the provisions of the foregoing sections 140 to 144, shall be payable at such times, in such instalments, to such persons and at such places, as may from time to time be determined by the orders of Government.

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Defaulters.

[1] 147. *Arrear. Defaulters.*—Any sum not so paid becomes thereupon an arrear of land-revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

148. *Liabilities incurred by default.*—If any instalment of land-revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to proceed to levy at once the entire balance of land-revenue due by the defaulter for the current year, in addition to such charge as a penalty or by way of interest as may be authorized according to a scale to be fixed from time to time, under the orders of the Governor in Council.

149. *Certified account to be evidence as to arrears.*—A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land-revenue due, and of the person who is the defaulter.

Collectors may realize each other's demands.—On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter ae if the demand arose in his own district.

A similar statement of account, certified by the Collector of Bombay, may be proceeded upon as if certified by ths Collector of a district under this Act.

Recovery of Arrears.

150. *Process for recovery of arrears.*—An arrear of land-revenue may be recovered by the following processes:—

[1] As to the local modification of s. 147, see para. 4 of foot-note [2] on p. 196, *supra*.

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(*a*) by serving a written notice of demand on the defaulter, under section 152;

[1] (*b*) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due, under sections 153

(*c*) by distraint and sale of the defaulter's moveable property, under section 154;

(*d*) by sale of the defaulter's immoveable property, under section 155;

(*e*) by arrest and imprisonment of the defaulter, under sections 157 and 158;

[2] (*f*) in the case of alienated holdings consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages, under section 159 to 163.

151. *Revenue-demands of former years how recoverable.*—The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Proviso.—Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

Notice of Demand.

152. *When notice of demad may issue.*—A notice of demand may be issued on or after the day following that on which the arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an

[1] As to the local repeal of s. 150, cl. (*b*), and s. 153, see para. 3 of foot-note [2] on p. 196, *supra*.

[2] As to the local modification of s. 150, cl. (*f*), see paras. 3 and 4 of foot-note [1] on p. 196, *supra*.

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arrear of revenue, and direct by what officer such notices shall be issued.

Forfeiture of Occupancy [1] *or Alienated Holding.*

[2] 153. *Occupancy or alienated holding for which arrear is due may be forfeited.*—The Collector may declare the occupancy [1] or alienated holding in respect of which an arrear of land-revenue is due to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts.

[3] *Proviso.*—Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

(*a*) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(*b*) unless after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

Sale of Defaulter's Property.

154. *Distraint and sale of defaulter's moveable property.*—The Collector may also cause the defaulter's moveable property to be distrained and sold.

By whom to be made.—Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

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[1] As to the local modification of the word "occupancy", see para. 4 of foot-note [2] on p. 196, *supra*.

[2] As to the local repeal of s. 150 cl. (*b*), and s. 153 see para. 3 of foot-note [3] on p. 196, *supra*.

[3] This proviso to section 153 was added by Bom. Act VI of 1901, s. 16.

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155. *Sale of defaulter's immoveable property.*—The Collector may also cause the right, title and interest of the defaulters in any immoveable property other than the land on which the arrear is due to be sold.

156. *Exemption from distraint and sale.*—All such property as is by the Code of Civil Procedure [1] exempted from attachment or sale in execution of a decree shall also be exempt from distraint or sale under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption shall be conclusive.

Arrest and Imprisonment.

157. *Arrest and detention of defaulter.*—At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari, unless the revenue due, together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued, and the cost of his subsistence during detention is sooner paid.

Imprisonment in civil jail.—If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district :

Limit to detention of defaulters.—Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt in amount to the arrear of revenue due by such defaulter.

158. *Power to declare by whom power of arrest to be exercised.*—The Commissioner may, with the sanction of the

[1] The reference to Act X of 1877 is altered in accordance with Act XIV of 1882, s. 3.

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Governor in Council, from time to time declare by what officers, or class of officers, the powers of arrest conferred by section 157 may be exercised, and also fix the cost of arrest and the amount of subsistance-money to be paid by Government to any defaulter under detention or imprisonment.

Attachment of Villages.

159. *Powers to attach defaulter's village, and take it under management.*—If the holding in respect of which an arrear is due consist of an entire village or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

[1] 160. *Lands of such village to revert free of incumbrances.*—The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respect to the rights of individvals ;

Powers of manager—and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

161. *Application of surplus-profits.*—All surplus-profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue and

[1] As to the local modification of s. 160, see para. 4 of foot-note [2] on p. 196, *supra*.

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the cost of the introduction of a revenue-survey, if the same be introduced under the provisions of section 111 [1], shall be applied in defraying the said arrear.

[2] 162. *Restoration of village so attached.*—The village or share of a village so attached shall be released from attachment and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment—

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

Disposal of surplus-receipts.—The Collector shall make over to the superior holder the surplus-receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs; but such surplus-receipts, if any, of previous years shall be at the disposal of Government.

[3] 163. *Village, etc., to vest in Government, if not redeemed within twelve years.*—If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the

[1] Words repealed by Bom. Act III of 1886 are omitted.

[2] As to the local modification of s. 162, see paras. 3 and 4 of foot-note [2] on p. 196, *supra*.

[3] As to the local repeal of s. 163, see para. 4 of foot-note [2] on p. 196, *supra*.

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sharers or any of his or their predecessors in title, or in anywise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the actual occupants of the soil.

Stay of proceedings.

164. *Processes to be stayed on security being given.*—Any defaulter detained in custody or imprisoned shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector or to such other person or officer.

Or on amount demanded being paid under protest.—And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

Procedure in respect of Sales.

165. *Procedure in effecting sales.*—When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and, in the case of moveable property, whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Proclamation of sales.—Such proclamation shall be made by beat of drum at the head-quarters of the taluqa, and in the village in which the immoveable property is situate, if the sale be of immoveable property; if the sale be of moveable property, the proclamation shall be made in the village in which such

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property was seized, and in such other places as the Collector may direct.

166. *Notification of sales.*—A written notice of the intended sale of immoveable property, and of the time and place thereof, shall be affixed in each of the following places, namely, the office of the Collector of the district, the office of the Mamlatdar or Mahalkari of the taluqa or mahal in which the immoveable property is situate, the chauri or some other public building in the village in which it is situate, and the defaulter's dwelling-place.

In the case of moveable propery, the written notice shall, be affixed in the Mamlatdar's or Mahalkari's office, and in the chauri or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale, whether of moveable or immoveable property, to be published in any other manner that he may deem fit.

167. *Sale by whom to be made.*—Sales shall be made by auction by such persons as the Collector may direct.

Time when sale may be made.—No such sale shall take place on a Sunday or other general holiday recognized by Government, nor until after the expiration of at least thirty days in the case of immoveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement of sale.—The sale may from time to time be postponed for any sufficient reason.

168. *Sale of perishable articles.*—Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

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169. *When sale may be stayed.*—If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale to the person appointed under section 146 to receive payment of the land-revenue due, or to the officer appointed to conduct the sale, or if he furnish security under section 164, the sale shall be stayed.

170. *Sale of moveable property when liable to confirmation.*—Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf.

In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

171. *Mode of payment for moveable property when sale is concluded at once.*—When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

172. *Payment when sale is subject to confirmation.*—When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of

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the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office-day after such day.

On payment of such full amount of the purchase-money, the purchasers shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

173. *Deposit by purchaser in case of sale of immoveable property.*—In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

174. *Purchase-money when to be paid.*—The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office-day after such fifteenth day.

175. *Effect of default.*—In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be sold, and the defaulting purchaser shall forfeit all claim to the property or any part of the sum for which it may be subsequently sold.

176. *Liability of purchaser for loss by re-sale.*—If the proceeds of the sale which is eventually made be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land-revenue.

177. *Notification before re-sale.*—Every re-sale of property in default of payment of the purchase-money, or after

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postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

178. *Application to set aside sale.*—At any time within thirty days from the date of the sale of immoveable property application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake, or fraud, in publishing or conducting it ;

but, except as otherwise is provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

179. *Order confirming or setting aside sale.*—On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: Provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

180. *Refund of deposit or purchase-money when sale set aside.*—Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

181. *On confirmation of sale, purchaser to be put in possession. Certificate of purchase.*—After a sale of any

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occupancy [1] or alienated holding has been confirmed in manner aforesaid, the Collector shall put the person to be declared the purchaser into possession of the land included in such occupancy [1] or alienated holding, and shall cause his name to be entered in the revenue-records as occupant [1] or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the occupancy [1] or alienated holding to which the certificate refers.

182. *Bar of suit against certified purchaser.*—The certificate shall state the name of the person declared at the time of sale to be the actual purchaser ; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

183. *Application of proceeds of sale.*—When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land-revenue.

and the surplus (if any) shall be paid to the person whose property has been sold.

Expenses of sale how calculated.—The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

184. *Payment of surplus to creditors.*—The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

[1] As to the local modification of the words "occupancy" and "occupant," see para. 4 of foot-note [2] on p. 196, *supra*.

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185. *Liability of purchaser for revenue.*—The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land-revenue becoming due in respect of such land subsequently to the date of the sale.

186. *Claims to attached moveable property how disposed of.*—If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice.

If the claim be admitted wholly or partly, the property shall be dealt with accordingly.

Except in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

Application of the Provisions of the Chapter.

187. *What moneys leviable under provisions of chapter.*—All sums due on account of land-revenue, all quit-rents, nazranas, succession-duties, transfer-duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land-revenue;

and all moneys due by any ~~contractor for the farm~~ of customs-duties, or of any other duty or tax, or of any other item of revenue whatsoever, and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force to be leviable as an assessment, or as a revenue-demand, or as an arrear of land-revenue,

shall be levied under the forgoing provisions of this chapter.

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Sureties liable as revenue-defaulters.—And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money, shall, on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters.

On resumption of farm, no payments to contractor in advance admitted.—And, in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

CHAPTER XII.

Procedure of Revenue-officers.

188. *Subordination of Revenue-officers.*—In all official acts and proceedings a Revenue-officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

189. *Power to summon persons to give evidence and produce documents.*—Every Revenue-officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make.

A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

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All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: Provided that exemptions under sections 640 and 641 of the Code of Civil Procedure [1] shall be applicable to requisitions for attendance under this section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

190. *Summons to be in writing, signed and sealed*;—Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal;

How to be served.—And shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

Service in district other than that of issuer.—If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

191. *Mode of serving notices.*—Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

Notice not void for error.—No such notice shall be deemed void on account of any error in the name or designation of

[1] This reference to ss. 640 and 641 of Act X of 1877 should now be read as applying to ss. 640 and 641 of Act XIV of 1882—see s. 3 of the latter Act.

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any person referred to therein, unless when such error has produced substantial injustice.

192. *Procedure for procuring attendance of witnesses.*—In any formal or summary inquiry, if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, section 160 [1].

Formal Inquiry.

193. *Mode of taking evidence in formal inquiries.*—In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Taking evidence given in English. Translation to be on record.—When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

194. *Writing and explanation of decisions.*—Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

[1] This reference to s. 160 of Act X of 1877 should now be read as applying to s. 160 of Act XIV of 1882—see s. 8 of the latter Act.

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Summary Inquiry.

195. *Summary inquiries how conducted.*—In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same:

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all or any of the rules applicable to a formal inquiry, if he deem fit.

196. *Formal and summary inquiries to be deemed judicial proceedings.*—A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860), and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Hearing and decision. Notice to parties.—Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

197. *Ordinary inquiries how conducted.*—As inquiry which this Act does not require to be either formal or summary, or which any Revenue-officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

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198. *Copies and translations, etc., how obtained.*—In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them, on due application being made for the same, subject to such charges for copying, etc., as may, from time to time, be authorized by Government.

199. *Arrest of defaulter to be made upon warrant.*—Whenever it is provided by this Act that a defaulter or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

200. *Power of Revenue-officer to enter upon lands or premises for purposes of measurement, etc.*—It shall be lawful for any Revenue-officer at any time, and from time to time, to enter, when necessary, for the purpose of measurement, fixing or inspecting boundaries, classification of soil, or assessment or for any other purposes connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land-revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land-revenue or partially or wholly exempt from the same.

Proviso.—Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

201. *Power to determine language of district.*—The Governor in Council may declare what shall, for the purposes

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of this Act, be deemed to be the language in ordinary use in any district.

202. *Mode of evicting person wrongfully in possession of land.*—Whenever it is provided by this or by any other Act for the time being in force that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, namely:—

by serving a notice on the person or persons in possession, requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance committ him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district, for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

CHAPTER XIII.

Appeals and Revision.

203. *Appeal from order passed by Revenue-officer to his superior.*—In the absence of any express provision of

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this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a Revenue-officer under this Act or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

204. *Appeal to Governor in Council.*—An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

205. *Limitation of appeals.*—No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. *Admission of appeal after period of limitation.*—Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

207. *Provision where last day for appeal falls on Sunday or holiday.*—Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday

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or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

208. *What to accompany petition of appeal.*—Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

209. *Powers of appellate authority.*—The appellate authority may either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

210. *Powers to suspend execution of order of subordinate officer.*—In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

211. *Power to call for and examine records and proceedings of subordinate officer.*—The Governor in Council and an Revenue-officer, not inferior in rank to a Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate Revenue-officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely,—an Assistant or Deputy Collector, a Mamlatdar, a Mahalkari, an [1] Assistant Superintendent of Survey, and an Assistant Settlement-officer.

[1] "An" was substituted for "and" by Act XVI of 1895.

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and to pass orders thereupon.—If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

212. *Explanation as to decisions or orders expressly made final.*—Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The Governor in Council alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV.

MISCELLANEOUS.

213. *Maps, land-registers and village-accounts, etc., open to inspection. Extracts and copies to be given.*—Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and survey-records, and all village-accounts and land-registers shall be open to the inspection of the public at reasonable hours, and certified extracts from such maps, registers and accounts, or certified copies thereof, shall be given to all persons applying for the same.

[1] 214. *Power to frame rules.*—The Governor in Council may from time to time make, and from time to time vary or rescind, rules or orders not inconsistent with this Act—

(*a*) determining the qualifications to be required of all members of establishments appointed under section 21 ;

[1] As to the local modification of s. 214, see para. 4 of foot-note [2] on p. 196. *supra*.

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(*b*) regulating the power of fining, reducing, suspending and dismissing Revenue-officers under section 32 ;

(*c*) prescribing the purposes to which land liable to the payment of land-revenue may be appropriated under section 48 ;

(*d*) regulating the system and manner of assessing land to the land-revenue under sections 52 and 100 ;

(*e*) for the disposal of forfeited occupancies or alienated holdings under section 56 ;

(*f*) fixing the maximum amount of fine leviable under section 61 when land which has been unauthorizedly occupied is appropriated to any non-agricultural purpose ;

(*g*) for the administration of any survey-settlement [1] and the maintenance of boundary-marks [1] ;

(*h*) prescribing the mode, form and manner in which appeals under Chapter XIII [2] shall be drawn up and presented ;

(*i*) generally for the guidance of all persons in matters connected with the enforcements of this Act, or in cases not expressly provided for therein.

Rules or orders made under any of the above clauses (*c*), (*d*), (*e*), (*f*) or (*i*) may be made either generally or in any particular instance.

215. *Rules to be published.*—All general rules or orders made by the Governor in Council under the last preceding section shall be published, and when published shall, until cancelled or amended, have the force of law.

Power to provide for penalties.—It shall be lawful for the Governor in Council, in making any such general rule, to

[1-1] These words were inserted in clause (*g*) of s. 214 by Bom. Act VI of 1901, s. 17.

[2] Words repealed by Bom. Act III of 1886 are omitted.

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attach to the breach of it, in addition to any other consequences which would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment [1], or five hundred rupees fine, or both.

[2] 216. *Chapters VIII to X how far applicable to alienated villages.*—Save as is otherwise provided in section III and hereinafter in this section, the provisions of Chapters VIII to X [1] shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapter shall be applicable to—

(*a*) all unalienated lands situated within the limits of an alienated village ;

(*b*) villages of which a definite share is alienated, but of which the remaining share is unalienated ;

(*c*) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government.

But it shall be lawful for the Governor in Council, on an application in writing being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapter to any such village.

[2] 217. *Occupants in alienated villages.*—When a survey-settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the land in their occupation as occupants in unalienated villages have, or are affected by, under

[1] Words repealed by Bom. Act III of 1886, are omitted.

[2] As to the local repeal of ss. 216 and 217, see para 4 of foot-note [2] on p. 196, *supra*.

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the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

218. *Construction of Act.*—Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of alienated land or of Government in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

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SCHEDULE A.

(*See section 2.*)

Number and year.	Subject.	Extent of repeal.
	Bombay Regulations.	
IV of 1827 ...	Forms of proceeding of the Courts of Law...	Clauses 2 & 3 of section 69.
XVI of 1827...	Duties and powers of the Collector and subordinate Revenue-officers	So much as has not already been repealed.
XVII of 1827	Assessment and realizations of the Land-revenue	Ditto.
V of 1830 ...	Revenue Commissioners and Sub-Collectors	Ditto.
XV of 1831 ...	Punishments of Patels falsifying revenue-records...	Ditto.
II of 1832 ...	Realization of revenue from Farmers	Ditto.
V of 1833 ...	Embezzlement: Hereditary District and Village-officers ...	Ditto.
	Acts of Governor General in Council.	
XVIII of 1838	Security	The whole Act.
XIII of 1842...	Collections of Inamdars' Revenues	Ditto.
XVII of 1842	Revenue Commissioners	So much as has not already been repealed.
III of 1846 ...	Boundary-marks	Ditto.
XII of 1850 ...	Public Accountants	The whole Act so far as it applies to Revenue-officers in the Presidency of Bombay.
XXI of 1852	Deputy Collectors	So much as has not already been repealed.

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SCHEDULE A.—(*continued*).

Acts of the Governor of Bombay in Council.

Number and year.	Subject	Extent of repeal.
VII of 1863 ...	Summary Settlement	Sections 4 & 5.
I of 1865 ...	Survey	The whole Act, except sections 37 & 38.
[1] *I of 1866*...	*Extending Bombay Act I of 1865*	*The whole Act.*
I of 1868 ...	Powers and Duties of Assistant and Deputy Collectors.	Ditto.
IV of 1868 ...	City Surveys	Ditto.
I of 1875 ...	Amendment of (Bombay) Act I of 1865.	Ditto.

[1] This schedule, so far as it relates to Bom. Act I of 1866, was repealed by Act XVI of 1895.

SCHEDULE B.

FORM OF BOND TO BE REQUIRED UNDER SECTION 23.

WHEREAS I,

inhabitant of

have been appointed to the office of

and have been called upon to furnish security under the provisions of section 23 of the Bombay Land-revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property, within such time, and to such person, as shall be demanded by the person, at the head

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of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of

rupees.

Dated

(Signature.)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF, THE PRINCIPAL.

WE,

hereby declare ourselves sureties for the abovesaid , that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council such sum as shall be deemed sufficient by the to cover any loss or damage which the Government may sustain by reason of such default.

Dated

(Signature.)

SCHEDULE C.

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 25 OR 157.

Seal.

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS *A. B.* of was, on the day of 187 , order by to (*here state substance of the demand made*); and whereas

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the said *A. B.* has neglected to comply with the said order, and it has therefore been directed, under the provisions of section of the Bombay Land-revenue Code, that he be imprisoned in the civil jail until he obey the said order or until he obtain his discharge under the provisions of section 25 or 28 (*or* section 157 or 164, *as the case may be*) of the said Code; you are hereby required to receive the said *A. B.* into the jail under your charge and to carry the aforesaid order into execution according to law.

Dated this day of 187 .

(*Signature of Collector.*)

SCHEDULE D.

FORM OF BOND TO BE REQUIRED UNDER SECTION 28 OR 164.

WHEREAS I,

have been ordered by

to (*here state the nature of the demand*), and whereas I dispute the right of the said to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the district Court of

to contest the justice of the demand, and do agree that in the event of a decree being passed against me, I will fulfil the same and will pay all amounts, including costs and interests, that may be due by me, or that, if I fail to institute a suit as aforesaid, I will, when required, pay the abovementioned amount of

rupees (*or* will deliver up the abovementioned paper or property, *as the case may be*), and in the case of my making default therein I hereby bind myself to forfeit to the Secretary of State for India in Council the sum of

rupees.

Dated.

(*Signature.*)

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FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

WE,

hereby declare ourselves securities for the abovesaid that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council the sum of rupees.

Dated

(*Signature.*)

SCHEDULE E.

(*See section 84.*)

I.—FORM OF NOTICE TO BE GIVEN BY LANDLORD TO TENANT TO QUIT.

To *A. B.*

I do hereby give you notice that I do intend to enter upon, and take possession of, the land (*here give the description*) which you now hold as tenant under me, and you are therefore required to quit and deliver up possession of the same at the end of this current year, terminating on the of 187 .

(*Signed.*) *C. D.*

Dated this day of 187 .

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD OF HIS INTENTION TO QUIT.

To *C. D.*

I do hereby give you notice that I shall quit and deliver up to you, a the end of this current year, terminating on the of 187 , the land (*here give the description*) which I hold from you.

(*Signed*) *A. B.*

Dated this day of 187 .

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SCHEDULE F.

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OR VILLAGES OR HIS AGENT, UNDER SECTION 89.

Seal.

The Governor in Council of Bombay, by virtue of the powers vested in him by the Bombay Land-revenue Code, is pleased to confer on you (jagirdar, *etc.*, *or* agent, *etc.*, *as the case may be*,) power to in (*or* in respect of) the villages and lands specified in this commission, in the manner prescribed in (*or* in section of the said Code).

The villages and lands over which the power thus conferred upon you extends are as follows :—

(*Here enter the description.*)

The within delegated power is vested in you during the pleasure and subject to the recall of the said Governor in Council.

(*Signed.*)

SCHEDULE H [1]

(*See section 133.*)

FORM OF SANAD FOR BUILDING-SITES.

Royal Arms.

THE SECRETARY OF STATE IN COUNCIL.

To

WHEREAS His Excellency the Governor of Bombay in Council, with a view to the settlement of the land-revenue

[1] There is no Schedule G.

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and the record and preservation of proprietary and other rights connected with a soil, has, under the provisions of the Bombay Land-revenue Code, directed a survey of the lands within the of , and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the division of the of , registered No. , in the map marked sheet , No. , and facing towards the , the road leading from to , containing about square yards, and of the following shape and about the following dimensions :—

You are hereby confirmed in the occupancy of the above-described ground exempt from all land-revenue (*or* subject to the payment of R per annum to the land-revenue).

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government without any objection or question as to title, to whosoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land-revenue according to the provisions of the Bombay Land-revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of years reckoned from the , and thereafter at successive periods of years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law).

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This sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of , this day of one thousand eight hundred and A.D.

(*Signed*).

SCHEDULE I.

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 202.

Seal.

To the officer in charge of the Civil Jail at

WHEREAS *A. B.* of has resisted (*or* obstructed) *C. D.* in removing *E. F.* (*or* himself, that is, the said *A. B.*) from certain land in the village of , in the taluqa, and whereas it is necessary, in order to prevent the continuance of such obstruction (*or* resistance), to commit the srid *A. B.* to close custody. You are hereby required, under the provisions of section 202 of the Bombay Land-revenue Code, to receive the said *A. B.* in the jail under your charge, and there to keep him in safe custody for days.

Dated this day of 187 .

(*Signature of Collector*).

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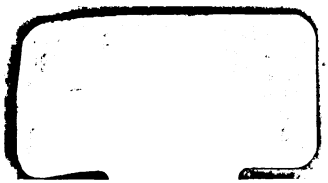

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